
(1993) 01 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 1639 of 1990

Union of India (UOI)

APPELLANT

Vs

Sher Singh and Others

RESPONDENT

Date of Decision : 28-01-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1)

Citation : (1993) 3 JT 693 : (1993) 1 LW 485 : (1994) 106 PLR 216 : (1993) 1 SCALE 209 : (1993) 1 SCC 608 : (1993) 1 SCR 326

Hon'ble Judges : N. M. Kasliwal, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The short controversy raised in the above appeal is whether the Union of India through the Deputy Inspector General, National Security Guard is a necessary and proper party to be impleaded when the land in question was acquired by the State of Haryana for the purpose of National Security Guard as desired by the Union of India.

2. The State of Haryana acquired some land situated in District Gurgaon for the purposes of National Security Guard in 1985 as desired by the Union of India. The land owners being not satisfied with the compensation awarded by the Land Acquisition Collector, submitted reference petitions u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). During the pendency of the reference application before the Additional District Judge, Gurgaon, an application was moved by the Union of India for being impleaded in the array of the respondents on the ground that the land had been acquired for the purpose of National Security Guard being controlled by the Union of India. It was submitted that any order enhancing the compensation would adversely affect the Union of India and it would be deprived of an opportunity to file an appeal, in case it is not impleaded as a party. The Additional District Judge by his order dated 28.11.1988 dismissed the application filed by the Union of India. It may be

noted that some of the land owners had impleaded Union of India as a party, but in 25 cases including the present case the Union of India was not impleaded as a party. The Union of India aggrieved against the order of the Additional District Judge filed a revision before the High Court. The High Court of Punjab and Haryana by its order dated 24.5.1989 dismissed the revision placing reliance upon the Full Bench decision of the same Court in Kulbhushan Kumar and Co. Vs. State of Punjab and Another, This Full Bench decision in turn relied on the decision of the Full Bench of the same Court in Indo Swiss Time Limited Vs. Umrao and Others,

3. In order to resolve the controversy and to decide the question raised in this appeal by grant of special leave, we would refer to the cases decided by this Court and the Full Bench decisions of the Punjab & Haryana High Court relied in the impugned order. In *The Municipal Corporation of the City of Ahmedabad v. Chandula Shamaldas Patel and Ors.* 1970 1 SCWR 183 decided on 8.1. 1970, a Division Bench of two judges of this Court held that the land was notified for acquisition by the State Government for the use of the Municipal Corporation, but that did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court allowing the petition. In the said case certain lands belonging to Chandulal Shamaldas Patel, the respondents were notified for acquisition u/s 4 of the Act by the Government of Bombay by a Notification dated February 19, 1959. The area in which the land was situated was subsequently allotted to the State of Gujarat on the bifurcation of the State of Bombay under the States Reorganisation Act, 1960, as such the Divisional Commissioner of the State of Gujarat issued a Notification u/s 6 on May 2, 1961. Both the Notifications were challenged in the High Court of Gujarat on various grounds and the petition was allowed by the High Court. The Municipal Corporation of the City of Ahmedabad being the fourth respondent in the writ petition in the High Court filed an appeal before this Court against the order of the High Court. A preliminary objection was raised against the maintainability of the appeal on the ground that the corporation was not aggrieved by the order of the High Court. This court allowed the preliminary objection on a short ground that though the property was notified for acquisition by the State Government for the use of the Municipal Corporation after it was acquired by the Government, but that did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court. It was further observed that substantially the grounds on which the writ petition was filed were that the Notifications were invalid on account of diverse reasons. Some of these reasons had been upheld and some had not been upheld, but all those grounds related to the validity of the Notifications issued by the Government of Bombay and the Government of Gujarat. This Court further observed as under:

Not even an order of costs has been passed against the Municipal Corporation of the City of Ahmedabad. We fail to see what interest the Municipal Corporation has which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the first respondent.

The appeal is dismissed as not maintainable.

4. A perusal of the above order shows that this Court did not examine any provisions of the Land Acquisition Act nor applied its mind on the question of 'any person interested' under the provisions of the Act having a right to challenge the order of the enhanced compensation passed by the Court in a reference u/s 18 of the Act. The preliminary objection was allowed simply on the ground that the impugned Notification in that case were issued by the Government of Bombay and the Government of Gujarat and the challenge was relating to the validity of such Notifications and no order had been passed against the Municipal Corporation of the City of Ahmedabad.

5. A Division Bench of this Court of two Judges in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, examined the question of 'person interested' under the land acquisition proceedings in detail and categorically held that the appellant Himalayan Tiles & Marbles being a private company for which the land was acquired was undoubtedly 'a person interested' as contemplated by Section 18(1) of the Act: It was held that the definition of 'a person interested' given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. It was further held that the lands were actually acquired for the purpose of the Company and once the land vested in the Government after acquisition, it stood transferred to the Company under the agreement entered into between the Company and the Government. Thus, it cannot be said that the Company had no claim or title to the land at all. Secondly, since under the agreement the Company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the Company may not have to pay a very heavy amount of money. This Court categorically held that the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is acquired is not an interested person is not correct. In the above case this Court further held that the preponderance of judicial opinion seems to favour the view that the definition of person interested must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. This view accords with the principles of equity, justice and good conscience. It may be further important to note that this Court in the above case approved the case of Punjab & Haryana High Court in *The Hindustan Sanitary-ware and Industries Ltd. and Another Vs. The State of Haryana and Others*,

6. The point came up for consideration before a Full Bench of three Judges of Punjab & Haryana High Court in the case of *M/s. Indo Swiss Time Limited (supra)*. S.S. Sandhawalia, CJ, followed the view taken in *Himalayan Tiles & Marbles's case (supra)* and did not follow the view of this Court in the *Municipal Corporation of the City of Ahmedabad's case (supra)*. Sandhawalia, CJ held that

in the case of The Municipal Corporation of the City of Ahmedabad, a short order was passed upholding a preliminary objection against the maintainability of the appeal. In that case their Lordships of the Supreme Court observed that The Municipal Corporation of the City of Ahmedabad for whose benefit the land had been acquired could not maintain an appeal in the Supreme Court against the judgment of the High Court setting aside that Notification. It is evident from the brief order that the matter was disposed of at the very threshold without any elaborate reference to either principle or by diverting to any authority. The appeal was held to be not maintainable on the short ground that their Lordships failed to see what interest the Municipality had which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the land owners. Sandhawalia, CJ, as such held that a company for whose benefit the land is acquired, can be impleaded as a party in the Court of the District Judge, in a reference preferred u/s 18 of the Land Acquisition Act, 1894. It was further held that there was no conflict or inconsistency between Order 1 Rule 10 of the CPC and Section 50(2) of the Act. The two provisions can be construed harmoniously and the provisions of Order 1 Rule 10 of the CPC would apply within the confines of Section 50(2) and the 'petitioner company (Indo Swiss Time Ltd.) was entitled to be impleaded as a party thereunder. On the other hand P.C. Jain and J.M. Tandon, JJ holding a majority view followed the view propounded in the Municipal Corporation of the City of Ahmedabad's case (supra) and did not agree with the view enunciated in Himalayan Tiles & Marbles's case (supra). The majority view was that an application under Order 1 Rule 10 of the CPC for being impleaded as a party by the company is not legally maintainable. The company is not an interested person so as to give it a right to become a party to the proceedings in reference before the District Judge. The only right under the Act available to the company is to appear and adduce evidence for the determination of the amount of compensation and the company by itself would have no right to file an appeal. It was also held that when a company has no right to file an appeal then a fortiori, it follows that an application under Order 1 Rule 10 of the CPC by a company to become a party in the proceedings would not be maintainable, because once an application for; becoming a party is allowed and a company is made a party then the company would have a right j to file an appeal. The only right given to a company u/s 50(2) of the Act is to appear and adduce evidence for the purpose of determination of the amount of compensation and for the I exercise of that right, it is not necessary nor is there any provision in the Act which may entitle the Company to ask for being impleaded as a party under the provisions of Order 1 Rule 10 of the J Civil Procedure Code.

7. Before a Full Bench of the Punjab & Haryana High Court consisting of S.S. Sandhawalia, 1 CJ, P.C. Jain and S.C. Mital, JJ. In Kulbhushan Kumar and Co. Vs. State of Punjab and Another, the question again came up for consideration whether the ratio in the Full Bench Judgment of Indo Swiss Time Ltd.'s I case (supra) still held the field or not. The question arose because of a short

observation of their Lordships of the Supreme Court in SLP No. 5389 of 1981 (Punjab United Pesticides and Chemicals Ltd. v. Puran Singh) decided on January 11, 1982. In that case Supreme Court had affirmed the earlier judgment in Himalayan Tiles & Marble's case (supra). The Full Bench of the Punjab & Haryana High Court in the above case of M/s. Kulbhushan Kumar & Company held that in the Punjab United Pesticides and Chemicals Limited's case (supra), the SLP and the appeal were directed against an order in limine of dismissal by Letters Patent Bench of the High Court, the correctness or otherwise of the Full Bench decision in Indo Swiss Time Limited's case was not even remotely canvassed before the Supreme Court. It was held that it is well settled that a Full Bench judgment could not be presumed to have been expressly overruled, which far from being considered had not been even referred to by the Supreme Court. It was thus held that the order of their Lordships in Punjab United Pesticides and Chemicals Limited's case (supra) did not overrule either expressly or impliedly the Indo Swiss Time Limited's case. It was also highlighted that a SLP against the Full Bench judgment in Indo Swiss Time Limited's case (supra) was decided by the Supreme Court on the basis of a compromise. A short order recorded in that SLP was in the following terms :

It is agreed by all the parties that the Company for whose benefit the acquisition has been made, viz. Indo Swiss Time Ltd., may be impleaded as a party to the proceedings, the application made by the appellant under Order 1 Rule 10 C.P.C. to the district Judge will stand allowed. The matter may be disposed of expeditiously by the learned District Judge. Special leave to Appeal granted and the appeals are allowed in the manner indicated above with no order as to costs.

8. It was thus held that the above agreed order in Indo Swiss Time Limited's case (supra) before their Lordships of the Supreme Court does not alter the situation or fact the presidential value of the earlier Full Bench. It was thus held that the ratios in Indo Swiss Time Limited's case (supra) still held the field.

9. In Neelagangabai and another Vs. State of Karnataka and others, , Division Bench of this Court of two judges affirmed the decision of the High Court of Karnataka dated March 4, 1987 which had relied upon the decision in Himalayan Tiles & Marbles's case (supra). In this case the High Court of Karnataka in a writ petition filed by Hubli Dharwar Municipal Corporation, set aside an award made under the Land Acquisition Act, 1894 in respect of the compensation payable to the appellants T. Ramakrishniah and directed to reopen the proceedings before the Civil Court on a reference u/s 18 of the Act, for fresh disposal in accordance with law. After the case was received by the Civil Court on reference, no notice was issued to the respondent - Corporation. The Court did not, however, proceed to take evidence and record its own finding on the valuation, as it was conceded on behalf of the State Government that the market value of the land could be calculated at the rate of Rs. 3,800 per guntha. The Court answered the reference on the basis of the consent of the land owners and the State. The State, however, was not satisfied with the award and filed an appeal which was

dismissed on the ground of being not maintainable as the impugned judgment was held to be a compromise decree. An attempt by the respondent - Corporation to intervene also failed. The Corporation thereafter moved the High Court with a writ petition under Article 226 of the Constitution, inter alia, challenging the validity of the Civil Court's judgment directing higher compensation to be paid. The High Court held that admittedly the land was acquired for the purpose of the Corporation and the burden of the payment of the compensation was on the Corporation. In this background the High Court held that it was mandatory for the Court of reference to have caused a notice to be served on the respondent - Corporation before proceeding to determine the compensation claim. Since no notice was given to the Corporation, it was deprived of an opportunity to place its case before the Court and the judgment rendered in the reference case was illegal and not binding on the Corporation. This Court confirmed the view taken by the High Court.

10. In *Krishi Upaj Mandi Samiti Vs. Ashok Singhal and others*, a Division Bench of this Court to which one of us was a party, it was held that the land was acquired by the Government for the benefit of the appellant *Krishi Upaj Mandi Samiti* which as a statutory body was a distinct entity. The Land Acquisition Officer under his award made u/s 11 of the Act determined the market value of the acquired lands at Rs. 500 per bigha and awarded compensation accordingly. On a reference sought by the respondent land owners the Additional District Judge enhanced the compensation to Rs. 1,000 per bigha. In the first appeal at the instance of the claimant land owners the High Court made a further enhancement of the compensation to Rs. 2,000 per bigha. The *Krishi Upaj Mandi Samiti* came in appeal before this Court and contended that the acquisition not having been for the Government itself, but for a statutory authority, it was incumbent upon the Court of reference as also the High Court in the appeal to issue notice to the appellant before considering the claim of the land owners for enhancement of the compensation, it was not disputed that the provisions of the Act which required the service of notice to the body for whose benefit the acquisition was made were attracted in this case and such notice was not served on the appellants and the appellant had not been given an opportunity of being heard, However the learned Counsel for the respondent land owners appearing in the above case fairly submitted that the judgment under appeal be set aside and the matter be remitted to the High Court for a fresh disposal after affording an opportunity to the appellant of being heard in the matter. In view of this submission, the judgment of the High Court was set aside and the appeal was remitted to the High Court for a fresh disposal in accordance with law after affording an opportunity of hearing to the appellant.

11. In the case in hand before us, it is an admitted position that the State of Haryana acquired land in District Gurgaon for the benefit of National Security Guard as desired by the Union of India. The land owners including the respondents of the present case filed reference petitions u/s 18 of the Act. During the pendency of the reference application before the Additional District

Judge, Gurgaon, an application was moved by the Union of India through Deputy Inspector General, National Security Guard for being impleaded as respondents on the ground that the land had been acquired for the purpose of National Security Guard. It was submitted in the application that the interest of the applicant Union of India will adversely suffer in case the rate of compensation was enhanced and it would also be deprived of an opportunity to file an appeal in case Union of India is not impleaded as a party. The Additional District Judge declined to implead the Union of India as a party. A revision application was dismissed by the High Court by the impugned order dated 24.5.1989. The High Court in the impugned order took the view that the matter stands concluded by the Full Bench judgment in the case of M/s. Kulbhushan Kumar & Company's case (supra).

12. We have heard learned Counsel for the parties and have thoroughly perused the record. It was contended on behalf of the appellant Union of India that the Central Government is neither a company nor a firm and as such the Full Bench judgment of the High Court relied upon in the impugned order has no application in the instant case. The Central Government has no machinery of its own for acquiring of land and such it had to depend upon the State Government for the above purpose. However, the financial implication with regard to the payment of compensation is to be borne by the Central Government. It was contended that the point is fully covered by the decision of this Court in the case of Himalayan Tiles & Marbles (supra). It was also submitted that in the meantime the learned Additional District Judge, Gurgaon by its order dated 17.1.1990 has decided the reference and has enhanced the compensation. It was submitted that a great injustice has been done to the appellant as it has not been given an opportunity to contest the order of enhanced compensation and in view of the fact that its application for impleadment has been dismissed, it has been left with no remedy of filing an appeal against the judgment of the learned Additional District Judge enhancing the compensation.

13. On the other hand, it was contended on behalf of the respondent - land owners that the learned Single Judge of the High Court passing the impugned order dated 24.5.1989 was bound by the Full Bench decisions of the said Court and there was no infirmity in taking such view. It was further contended that even if there was a conflict between the two decisions of this Court in *The Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel and Ors.* and in *Himalayan Tiles & Marbles (P) Ltd.'s case*, both by a Division Bench comprising of two Hon'ble Judges, the conflict can only be resolved by referring the case to a larger Bench of this Court.

14. In our view, there is no necessity of referring the case to a larger Bench. So far as the case of *The Municipal Corporation of the City of Ahmedabad* decided as back as in 1970 is concerned, it is a short order based on the peculiar facts of that case alone. In that case there is no discussion of the relevant provisions of the Act nor any case law has been discussed. The Notification u/s 4 of the Act

was issued by the Government of Bombay on February 19, 1959. Another Notification u/s 6 of the Act was issued by the Divisional Commissioner of the State of Gujarat u/s 6 of the Act on May 2, 1961. Both the Notifications were challenged by the land owner on various grounds by filing a writ petition in the High Court. The petition was allowed by the High Court. The Municipal Corporation of the City of Ahmedabad came in appeal to this Court and a preliminary objection was raised against the maintainability of the appeal filed by the Corporation. It was urged that the Corporation was not aggrieved by the order. This Court upheld the preliminary objection on the ground that all the grounds related to the validity of the Notifications issued by the Government of Bombay and the Government of Gujarat. It was held that not even an order of costs has been passed against The Municipal Corporation of the City of Ahmedabad. It was further observed "we fail to see what interest the Municipal Corporation has which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the first respondent." It admittedly shows that in the above case neither any stage of filing any reference u/s 18 of the Act before the Court had arrived nor any compensation had been determined by the Court adverse to the interest of the Municipal Corporation of the City of Ahmedabad for whose benefit the land was acquired. Even no award had been passed by the Land Acquisition Collector and it was only the Notifications issued u/s 4 and 6 of the Act by the Government of Bombay and the Government of Gujarat had been challenged by a writ petition in the High Court. In these circumstances, this Court took the view that not even an order of costs had been passed against The Municipal Corporation of the City of Ahmedabad and no interest of the Municipal Corporation was affected and on this ground alone the preliminary objection was sustained. Thus, the above case cannot be considered as an authority for deciding the question raised in the case in hand before us.

15. In *Himalayan Tiles & Marbles's case* (supra), the appellant, a private company was carrying on the business of manufacture and sale of artificial marbles and tiles. In or about 1957 the company moved the Government for acquiring additional land for purposes of the company and the Government on January 7, 1958 issued a notification u/s 4 of the Land Acquisition Act, 1894, which was followed by a separate notice by the Land Acquisition Officer acquiring the land in dispute. This was followed by another notification u/s 6 of the Act which was served on the respondent on January 25, 1960. The purpose of the acquisition was mentioned in the Notification, as "public purposes for which the land is needed for Himalayan Tiles and Marble (Pvt.) Ltd." The acquisition proceedings culminated in an award made u/s 12 of the Act on April 11, 1961, which was published in the State Gazette on April 18, 1961. On December 11, 1961 a letter was written on behalf of the Government informing the owner of the acquired land that possession would be taken on or about the 12th of January, 1962. The first respondent in his writ petition to the High Court, contended that the Government was not competent to acquire the land for purposes of a private company which could not be said to be a public purpose u/

s 4 of the Act and prayed that the entire land acquisition proceedings should be quashed. A Single Judge of the High Court accepted the plea, allowed the writ petition and quashed the land acquisition proceedings along with the notifications. The appellant filed an appeal before the Letters Patent Bench which confirmed the view of the Single Judge and dismissed the appeal on the ground that the appellant had no locus standi to file the appeal, as it was not a person interested' within the meaning of Section 18(1) of the Act. The Himalayan Tiles & Marbles (P) Ltd. came in appeal to this Court by grant of special leave. The Court in this case examined the question elaborately with reference to the relevant provisions of the Act including Section 18 and the entire case law on the point. It was clearly held that the definition of a person interested' given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. It was observed that since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. After examining the various case law on the subject, it was observed that the preponderance of judicial opinion seems to favour the view that the definition of person interested must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In their Lordships opinion this view accorded with the principles of equity, justice and good conscience. It may be further noted that the above decision in Himalayan Tiles & Marbles (P) Ltd.'s case was given on March 28, 1980 and has been consistently followed by this Court as already mentioned above in the cases of Neelagangabai and Anr. (supra) and Krishi Upaj Mandi Samiti (supra) decided on May 3, 1990 and March 25, 1991 respectively. No decision was brought to our notice by the learned Counsel taking a contrary view after the decision in Himalayan Tiles & Marbles's case. Even in the case of Indo Swiss Time Limited, S.S. Sandhawalia, CJ had followed the judgment in the Himalayan Tiles & Marbles case and had rightly distinguished the case of The Municipal Corporation of the City of Ahmedabad. The majority view in the above case which followed the Municipal Corporation of the City of Ahmedabad is held to be wrong. So far as later Full Bench of the Punjab & Haryana High Court in M/s. Kulbhushan Kumar & Company's case (supra) is concerned, it had followed its earlier decision in Indo Swiss Time Limited's case and as such while approving the minority view of S.S. Sandhawalia, CJ, we overrule both the above Full Bench decisions of the Punjab & Haryana High Court being contrary to the law laid down by this Court in Himalayan Tiles & Marbles case (supra).

16. We fully agree with the reasons and conclusion arrived at in Himalayan Tiles & Marbles case. We accordingly allow this appeal and set aside the order of the High Court dated 24.5.1989. However, after dismissing the application for impleadment filed by the Union of India by the Additional District Judge by order

dated 28.11.1988, it has been brought to our notice that by decision dated 17.1.1990, the Additional District Judge has enhanced the Compensation. The Union of India has been deprived of filing an appeal against the said order of the Additional District Judge dated 17.1.1990 as its application for impleadment was itself dismissed by the Additional District Judge, we now direct that the application on the union of India for impleadment is allowed as a result of which it is entitled to file an appeal in the High Court against the judgment of the Additional District Judge dated 17.1.1990. The period of limitation of 90 days for filing an appeal in the High Court shall be counted from the date of the present order. In case such appeal is filed, the High Court shall pass an appropriate order in accordance with law on the merits of the appeal. In the circumstances of the case, there will be no order as to costs.