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The Sakhigopal Regulated Market Committee Vs. Brudaban Chandra Hota and anr.

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Court : Orissa

Decided On : Aug-28-1990

Reported in : AIR1991Ori252

Judge : G.B. Patnaik, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 18, 50(2) and 54; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10(2)

Appeal No. : Civil Revision No. 634 of 1990

Appellant : The Sakhigopal Regulated Market Committee

Respondent : Brudaban Chandra Hota and anr.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Ashok Mukherjee, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

1. An interesting question that arises for consideration in this revision is whether any local authority or company for whose benefit land is acquired by Government

under the provisions of the Land Acquisition Act can claim to be added as a party in the proceedings before the Subordinate Judge under Section 18 of the Land Acquisition Act.

2. The petitioner made an application before the Subordinate Judge to be arrayed as a party in the proceedings before him, but the Subordinate Judge by order dated 21-7-1990 having rejected the petitioner's prayer to be added as a party but only permitting the petitioner to place the relevant facts and to assist the court in arriving at due compensation, the petitioner has preferred this revision.

3. Admittedly, the land in question for which the proceeding under Section 18 of the Land Acquisition Act is pending before the Subordinate Judge has been acquired for the petitioner. Mr. Mukherjee appearing for the petitioner contends that since the land has been acquired for the petitioner and the burden of paying the compensation assessed is entirely on the petitioner, the petitioner must be held to be a 'person interested' and, therefore, should be permitted to be added as a party in the proceeding before the Subordinate Judge.

4. The learned Additional Government Advocate appearing on behalf of the State, on the other hand, contends that the rights of a local authority or company for whose benefit the land is acquired are prescribed in Sub-section (2) of Section 50 of the Land Acquisition Act and they can, therefore, appear and adduce evidence for the purpose of determining the amount of compensation, but they cannot be added as a party in a reference under Section 18 of the Act. The rival Contentions require an analysis of the provisions of the Land Acquisition Act as well as the several case-laws cited at the Bar on the point.

5. Section 3(b) of the Land Acquisition Act defines the expression 'person interested' to include all persons claiming an interest in compensation to be made an account of the acquisition of the land under the Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. Section 5-A which provides for hearing of objection entitles a person interested to file objection to the acquisition of the land. Section 9 requires notice to be given to persons interested. Section 11 is the provision for making an enquiry and award by the Collector and it stipulates that the Collector shall

proceed to enquire into the objection, if any, filed by any person interested pursuant to a notice given under Section 9. Section 12 attaches a finality to the award of the Collector. Section 18 confers power on any person interested to get the matter referred to the Court for determination. Section 20 is the procedure for service of notice by the Court and it says that the notice shall be served on the applicant and all persons interested in the objection except such of them as have consented without protest to receive payment of the compensation awarded and if the objection is in regard to the area of the land or to the amount of compensation, then the Collector. Thus, in none of the aforesaid provisions, a local authority or company for whose benefit the land is acquired can be said to be a 'person interested' nor can it be said that he has any right to be there in the proceedings. Section 50 provides for acquisition of land at the cost of a local authority or company. Sub-section (2) of Section 50 entitles the local authority or the company concerned to appear before the Collector or Court and adduce evidence for the purpose of determining the amount of compensation. The proviso to Sub-section (2), however, disentitles such local authority or company from making a demand of reference under Section 18. Therefore, under the Land Acquisition Act, the only right that is conferred on a company or local authority is as provided in Sub-section (2) of Section 50 of the Act and, therefore, in terms of the provision, such a local authority or company cannot claim to be added as a party in any proceedings either before the Collector or before the Subordinate Judge.

6. Mr. Mukherjee, however, strenuously argues that in view of the decision of the Supreme Court in the case of *Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (dead) by L.Rs.*, AIR 1980 SC 1118, there cannot be any doubt that the local authority or company can also be added as a party to the proceedings and the Subordinate Judge committed an error in rejecting the said prayer. In support of this contention, apart from relying upon the aforesaid Supreme Court decision, Mr. Mukherjee relies on the following other decisions in *Gujarat Housing Board, Ahmedabad v. Nagajibhai Laxmanbhai*, AIR 1986 Gujarat 81 (FB); *National Thermal Power Corporation v. Raghunath Prasad*, AIR 1981 Allahabad 344; *Union of India v. Kassappa Madivallappa Kulkarni*, 1986 (1) SCALE (Supreme Court Almanac) 546; *H.P. Housing Board v. Hari Sen*, 1989 LACC (All India Land Acquisition and Compensation Cases) 75; *Amar Singh Yadav v. Shanti Devi*, AIR

1987 Patna 191 (FB) and The Andhra Pradesh Agricultural University, Rajendranagar, Hyderabad, represented by its Registrar v. Naseema Bibi, (1983) 1 AWR 330.

7. The learned Additional Government Advocate, on the other hand, in support of his stand that a company or local authority cannot be added as a party relies upon the following decisions in Indo Swiss Time Limited, Dundahera v. Umrao, AIR 1981 Punj & Har 213 (FB); The Andhra Pradesh Agricultural University, Rajendranagar v. Mahmoodunnisa Begum, AIR 1976 Andhra Pradesh 134 (FB); The Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel, 1971 (3) SCC 821; M.P. State Co-operative Oilseed Growers Federation, Seoni Malwa v. State of Madhya Pradesh, AIR 1987 Madhya Pradesh 174; Amar Singh Yadav v. Shanti Devi, AIR 1987 Patna 191 (FB); Santosh Kumar v. Central Warehousing Corporation, AIR 1986 SC 1164 and Nevelli Lignite Corporation Ltd. v. Rangaswamy, AIR 1990 Madras 160 (FB), I shall now examine the authorities cited at the Bar.

8. The sheet-anchor of Mr. Mukherjee's contention appears, however, in Himalaya Tiles and Marble's case (AIR 1980 SC 1H8). In that case, an acquisition made for the purpose of the company named Himalaya Tiles and Marble (P) Ltd. was assailed in the High Court in a writ petition and the learned single Judge quashed the acquisition proceeding on a finding that the acquisition was not for any public purpose as contemplated by Section 4 of the Land Acquisition Act. When the company filed a Letters Patent Appeal, that appeal was dismissed by the Division Bench on the ground that the company had no locus standi to file the appeal as it was not a person interested within the meaning of Section 18(1) of the Land Acquisition Act. The company, therefore, preferred an appeal to the Supreme Court. Their Lordships of the Supreme Court came to hold that the inclusive definition of a 'person interested' in Section 18 must be liberally construed so as to embrace all persons who might be directly or indirectly interested either in title of the land or in the quantum of compensation and since the company would have to pay the entire compensation, it was certainly interested in seeing that a proper quantum of compensation was fixed so that the company might not have to pay a very heavy amount of money and for that purpose the company could undoubtedly

appear and adduce evidence on the question of the quantum of compensation. The Court ultimately came to the conclusion that the company was vitally interested both in title to the property as also in the compensation to be paid therefor because both these factors concerned its future course of action and if decided against him, would seriously prejudice his rights and, therefore, the company would be a person interested as contemplated by Section 18(1) of the Act and had the locus to file an appeal before the Division Bench. The aforesaid decision nowhere has laid down that such a company or local authority has the right to be added as a party to the proceedings. On the other hand, by allowing such a company to prefer an appeal against the decision of a learned single Judge in a writ proceeding, their Lordships of the Supreme Court have merely enforced the rights conferred on the company under Sub-section (2) of Section 50. Thus, in my considered opinion, the aforesaid Supreme Court decision does not go to the extent as contended by Mr. Mukherjee that a company has the right to be added as a party in a proceeding before the Collector or the Subordinate Judge.

The next decision on which Mr. Mukherjee relies very much is the Full Bench decision of the Gujarat High Court in Gujarat Housing Board's case (AIR 1986 Gujarat 81 (FB)). That decision fully supports Mr. Mukherjee's contention. The Gujarat Housing Board for whose benefit the land had been acquired filed an application under Order 1, Rule 10(2) of the Code of Civil Procedure to be added as a party defendant in a suit filed by the plaintiff to set aside the notification issued under Sections 4 and 6 of the Land Acquisition Act. The learned Trial Judge having rejected the same, the Board preferred a revision. When the revision was heard before a learned single Judge, as there were conflicting decisions, the learned single Judge directed that the matter should be heard by a larger Bench and that is how the matter was placed before the Full Bench. Gokulakrishnan, C.J. speaking for the Court held that the person for whose benefit the land was acquired was an interested party and had every right to be added as a party-defendant to the suit challenging the acquisition in order to effectually and completely decide the dispute in issue. Following the dictum of the Supreme Court in Himalaya Tiles and Marble's case (supra), it was also observed that the words 'person interested' given in Section 18 was in inclusive definition and must be liberally construed so as to embrace all persons who might be directly or indirectly

interested either in the title to the land or in the quantum of compensation. It was observed (at page Guj 88, AIR 1986):

'.....the impugned land acquisition is for the public purpose of the Gujarat Housing Board and is being acquired at the cost of the Gujarat Housing Board. The entire amount of compensation is to come out of the funds of Gujarat Housing Board, who is the petitioner herein. Even the cost of the present litigation irrespective of its result, is to be borne by the Gujarat Housing Board. In fact all the stake in the result of the litigation and the cost of the litigation is on the Gujarat Housing Board and as such it can be easily presumed that the Gujarat Housing Board is an interested party in this litigation. The suit can be effectually and completely decided only in the presence of the petitioner herein. Even if it is considered that the petitioner is not a necessary party, there cannot be any two opinion in view of the Supreme Court decision rendered in Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho, AIR 1980 SC 1118, that the petitioner is a proper party to be added as the party-defendant to the suit.'

Thus the aforesaid decision supports Mr. Mukherjee's contention fully.

The next decision in National Thermal Power Corporation's case, (AIR 1981 All 344) is a Bench decision of the Allahabad High Court wherein the right of a Corporation for whose benefit the land was acquired to file an appeal under Section 54 of the Land Acquisition Act came up for consideration. Their Lordships held that where the land was acquired for the benefit of a Corporation and the amount of compensation was payable by it, such a Corporation was an interested person entitled to take part in proceedings before the District Judge on reference under Section 18 and to file appeal under Section 54 before the High Court against the judgment of the District Judge. This decision also confers the right on the Corporation of taking part in a proceeding before the Court and to file an appeal under Section 54 to the High Court, but does not go to the extent of saying that such a person can also be added as a party-defendant in the proceedings. According to Mr. Mukherjee, the right to be present and to participate in the proceeding would become illusory if the person concerned is not added as a party-defendant and, therefore, in all fairness such person should be permitted to be

added as a party-defendant. I am unable to accept this contention of Mr. Mukherjee in view of the clear legislative intent contained in Sub-section (2) of Section 50 of the Land Acquisition Act.

The next decision is in The Andhra Pradesh Agricultural University's case, ((1983) 1 AWR 330), wherein the question for consideration was whether the beneficiary for whose benefit acquisition of land was made could maintain an appeal against an award under Section 18 of the Land Acquisition Act and the same was answered in the affirmative following Himalaya Tiles and Marble's case (supra). There is no dispute with this proposition now, in view of the Supreme Court decision directly on the point. But the said decision nowhere lays down that such a person would be added as a party-defendant in the proceedings.

Though Mr. Mukherjee also very much relies upon the Full Bench decision of the Patna High Court reported in AIR 1987 Patna 191 (FB), but on a scrutiny of the said decision it transpires that it goes against Mr. Mukherjee's contention. I shall revert to the same while discussing the case-laws cited by the learned Additional Government Advocate.

The next decision cited by Mr. Mukherjee is the decision of the Supreme Court in Union of India v. Kassappa Madivallappa Kulkarni, 1986 (1) SCALE 546. The question therein was whether the Union of India could prefer an appeal against an award since admittedly the acquisition was made for the construction of civil aviation and it was the Union which was ultimately liable to pay the compensation. The High Court had hold the appeal to be not maintainable. The Supreme Court, however, held that the appeal at the instance of the Union was maintainable.

The only other decision on which Mr. Mukherjee places reliance is the Bench decision of the Himachal Pradesh High Court in H. P. Housing Board's case, (1989 LACC 75). In that case, an appeal against an award at the instance of the Board for whose benefit the land had been acquired was not admitted by the learned single Judge on the ground that such an appeal was not maintainable. In

Letters Patent Appeal, the Division Bench held :--

'.....a person who is not a party to the suit, may prefer an appeal with the leave of the appellate court. And, such leave should be granted if he would be prejudicially affected by the judgment.....'

Construing Section 54 of the Land Acquisition Act, the Bench further observed : --

'.....Our analysis impels us to the view that while expressly prohibiting a demand for a reference under Section 18 at the instance of the company or the local authority, even after permitting them to appear and adduce evidence before the Collector as well as the Court, and not providing expressly that the decision arrived at by the Court shall also be immune from challenge, under the proviso to Section 50(2) of the Act, the Legislature made its intention absolutely clear. It has not precluded a challenge to the amount of compensation determined by the Court by the local authority or the company. Not much assistance can, therefore, be drawn by the learned counsel for the respondents from the proviso to Section 50(2) for the submission that the local authority or the company for whom the land was being acquired could not maintain an appeal under Section 54 of the Act against the award made by the Court.'

Thus, excepting the Full Bench decision of the Gujarat High Court in Gujarat Housing Board's case (AIR 1986_Gujarat 81 (FB)), no other decision relied upon by Mr. Mukherjee enunciates the proposition that a company or local authority for whose benefit the land is acquired has a right to be added as a party-defendant in the proceedings. On the other hand, all those decisions clearly state that such company or local authority can be present in a proceeding and adduce evidence for the purpose of determining the amount of compensation and if the ultimate award goes against him then it can prefer an appeal under Section 54 of the Land Acquisition Act.

9. Let me now consider the decisions cited by the learned Additional Government Advocate. The earliest decision is that of the Supreme Court in the case of the Municipal Corporation of the City of Ahmedabad,(1971 (3) SCC 821). In that case, an acquisition made for the purpose of school of neighbourhood work had been challenged in a writ petition in Gujarat High Court. The Municipal Corporation of the City of Ahmedabad was the fourth respondent in that petition. In the appeal

before the Supreme Court at the instance of the said Municipal Corporation, a contention had been raised that the said appeal was not maintainable. Their Lordships of the Supreme Court agreeing with the said contention held the appeal to be not maintainable and observed :--

'.....The property, it is true, was notified for acquisition by the State Government for the use of the Municipal Corporation after it was acquired by the Government, but that, in our judgment, 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. Substantially the grounds on which the petition was filed were that the notifications were invalid on account of diverse reasons. Some of these reasons have been upheld and some have 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. 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.'

There is of course not much of discussion in the aforesaid judgment, but it proceeds on the theory that the Municipal Corporation cannot be said to be affected by the order of the High Court quashing the notification. Thus to some extent it goes against the decision of the Supreme Court in Himalaya Tiles and Marble's case (supra), but the two decisions are the Bench decisions of equal strength and in the Himalaya Tiles and Marble's case earlier decision of the Supreme Court in the Municipal Corporation of the City of Ahmedabad case has not been noticed.

The next decision cited by the learned Additional Government Advocate is the Full Bench decision of the Andhra Pradesh High Court reported in AIR 1976 Andh Pra 134 (FB). This represents the other extreme view, namely that the person for whose benefit the land has been acquired has no place in the actual acquisition proceedings excepting to adduce evidence that too, for the limited purpose of determining the amount of compensation and such a person cannot prefer an appeal with leave of the Court. This extreme view of the Andhra Pradesh High

Court cannot now be accepted in view of the direct decision of the Supreme Court in Himalaya Tiles and Marble's case (AIR 1980 SC 1118), referred to earlier.

The next decision is the Full Bench decision of the Punjab and Haryana High Court reported in AIR 1981 Punj and Har 213 (FB). The majority view in the aforesaid case is that an application under Order 1, Rule 10, Code of Civil Procedure, by the company for whose benefit the land is acquired for being impleaded as a party is not legally maintainable and the said company has the only right under Section 50(2) of the Land Acquisition Act to appear and adduce evidence for the purpose of determination of the amount of compensation and for the exercise of that right it is not necessary nor is there any provision in the Act entitling the company to ask for being impleaded as a party to the proceeding. The majority view took into consideration the divergent views of the Supreme Court, one expressed by Shah, J. in the Municipal Corporation of the City of Ahmedabad case (1971 (3) SCC 821) and the other expressed by Fazal Ali, J., in Himalaya Tiles and Marble's case (AIR 1980 SC 1118) and in view of the direct conflict between the two decisions of co-equal Benches of the Supreme Court, the learned Judges followed the judgment which appeared to them to state the law accurately. Sandhawalia, C.J., however, in a differing judgment followed the decision of the Supreme Court in Himalaya Tiles and Marble's case and held that there was no conflict between Order 1, Rule 10, Code of Civil Procedure and Section 50(2) of the Land Acquisition Act and a company for whose benefit the land is acquired would be a 'person interested' within the meaning of the definition and it could claim to be impleaded as a party.

The next decision is the Full Bench decision of the Patna High Court in Amar Singh Yadav's case (AIR 1987 Patna 191 (FB)). One of the questions that was posed for answer to the Full Bench was whether a person who was not before the Land Acquisition Officer could maintain an application for being impleaded as a party under Order 1, Rule 10 of the Code of Civil Procedure in the reference proceeding before the District Judge under Section 18 of the Land Acquisition Act and Sandhawalia, C.J. speaking for the Court, answered as follows:--

'.....It is held that a person who was not before the Land Acquisition Officer cannot successfully maintain an application for being impleaded as a party under Order 1, Rule 10 of the Civil P.C. in the reference proceedings before the District Judge under Section 18 of the Land Acquisition Act.'

Thus the learned Judge appears to have taken a contrary view than what he had taken as a minority view in the Full Bench case of the Punjab and Haryana High Court, referred to earlier.

The next decision is that of the Supreme Court in Santosh Kumar's case (AIR 1986 SC 1164). The question that arose for consideration in this case was whether a company for whose benefit the land was acquired could challenge the amount of compensation awarded by the Collector in an application under Article 226 of the Constitution. After analysing the different provisions of the Land Acquisition Act and following the decision of Shah, J., in the Municipal Corporation of the City of Ahmedabad case (1971 (3) SCC 821), their Lordships held that a company could not maintain an application under Article 226 of the Constitution to challenge the amount of compensation awarded when Section 50(2) expressly barred the company or the local authority at whose instance the acquisition is made from demanding a reference under Section 18 of the Act, notwithstanding that such company or local authority might be permitted to adduce evidence before the Collector.

The Supreme Court ultimately held that the High Court was in error in entertaining the writ petition at the instance of such company. Though this decision is not directly on the point in issue, yet it has approved the earlier decision of the Supreme Court in the Municipal Corporation of the City of Ahmedabad case.

The next decision is the Bench decision of the Madhya Pradesh High Court reported in AIR 1987 Madh Pra 174. It was held by their Lordships construing the different provisions of the Land Acquisition Act that a company or local authority at whose instance the land was acquired could not make a reference under Section 18 of the Act in view of the express bar contained in the proviso to Section 50(2) of the Act, nor the High Court could entertain a writ petition against an award at the instance of 'such company'. The learned Judges in this case have referred to the

Himalaya Tiles and Marble's case of the Supreme Court as well as the case of Santosh Kumar (AIR 1986 SC 1164).

The only other decision relied upon by the learned Additional Government Advocate is the Full Bench decision in Neyvelli Lignite Corporation's case (AIR 1990 Madras 160 (FB)). It was held by their Lordships that the beneficiaries for whose benefit the lands were acquired by the Government were not entitled to be treated as parties to the land acquisition proceedings and further appeals arising out of the same excepting to the limited right provided in Section 50(2) of the Land Acquisition Act and, therefore, the awards passed were not invalid either for want of notice to such beneficiaries or for not having impleaded them as parties. After analysing the different provisions of the Act, their Lordships observed:--

'On a consideration of the abovesaid provisions of law, we find that the only right to which the petitioner Corporation and other beneficiaries are entitled to, is the one given under Section 50(2) of the Act which has been extracted above.....'

Their Lordships further observed that there was no scope for invoking Order 1, Rule 10, Code of Civil Procedure, and to implead the company or local authorities as parties to the proceeding which, in effect, would defeat the provisions of the Land Acquisition Act.

10. A conspectus of the aforesaid decisions makes it explicitly clear that excepting the Full Bench decision of the Gujarat High Court in Gujarat Housing Board's case (AIR 1986 Gujarat 81 (FB)) in no other case, a person for whose benefit the land is acquired has been directed to be added as a party-defendant. On the other hand, the Full Bench decisions of Punjab and Haryana, Madhya Pradesh, Patna and Madras High Courts appear to have taken a contrary view and the Supreme Court in Himalaya Tiles and Marble's case (AIR 1980 SC 1118) had not indicated that such a company would be added as a party-defendant. As has been stated earlier, while deciding Himalaya Tiles and Marble's case, their Lordships of the Supreme Court did not consider the decision in the Municipal Corporation of the City of Ahmedabad case (1971 (3) SCC 821) which was later on followed in Santosh Kumar's case (AIR 1986 SC 1164). In my considered opinion, the position that emerges is as follows:--

(a) A company or local authority for whose benefit the land is acquired has a right to appear and adduce evidence before the Collector or Court for the purpose of determining the amount of compensation;

(b) If such a company or local authority is aggrieved by the award of compensation, then it can prefer an appeal under Section 54 of the Land Acquisition Act; and

(c) Such a company or local authority cannot claim to be added as a party to a land acquisition proceeding either before the Collector or before the Court and Order 1, Rule 10, Code of Civil Procedure, will not assist such a company or local authority.

In view of my conclusions, as aforesaid, the learned Subordinate Judge having granted the right to the petitioner as contained in Sub-section (2) of Section 50, but having rejected petitioner's prayer, to be added as a party, has not committed any error so as to be interfered with by this Court in this revision.

11. This revision accordingly fails and is dismissed, but in the circumstances, without any order as to costs.

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