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Court : Rajasthan

Decided On : Jul-07-1994

Reported in : 1995(1)WLC48; 1994(2)WLN74

Judge : R.S. Kejriwal and; N.K. Jain, JJ.

Appeal No. : D.B. Civil Special Appeal No. 27 of 1988

Appellant : B.S.F.

Respondent : State and ors.

Judgement :

R.S. Kejriwal, J.

1. The case has come up on the application filed by the respondent No. 1 State of Rajasthan for transposing it as an appellant in this Special Appeal Under Section 18 of the Rajasthan High Court Ordinance, 1949, which has been directed against the judgment and decree dated 11.2.1988, by which learned Single Judge allowed S.B. Civil Misc. Appeal No. 104/1979, filed by the respondents No. 4 and 5 i.e. the claimants.

2. Brief relevant facts of the case are that the land bearing khasra Nos. 1620, 1621, 1622 and 1625, belonging to the claimants respondents No. 4 and 5 was acquired by the State Government for the appellant. Possession of the aforesaid

land was also taken by the State Government on 10.6.1968. The claimants respondents No. 4 and 5 submitted their claim. The Land Acquisition Officer awarded a sum of Rs. 52,650/- as the cost of the land, Rs. 3,515/-as the cost of trees, Rs. 61,347.96 as the cost of constructions and Rs. 7500/- of the manure. Being hot satisfied with the Award of the Land Acquisition Officer, the claimants moved for a reference Under Section 18 of the Land Acquisition Act (for short the 'Act'), before the learned Civil Judge, Jodhpur, who modified the Award passed by the Land Acquisition Officer. He enhanced the cost of the land to Rs. 1,06,179.75 and cost of the trees to Rs. 56,940. Aggrieved by the aforesaid order of learned Civil Judge, Jodhpur, the appellant filed Civil Miscellaneous Appeal No. 102/1979, the claimants-respondents filed C.M.A. No. 104/1979, the State of Rajasthan filed C.M.A. Nos. 122/1979 and 125/1979, before this Court. The learned Single Judge, vide his judgment and decree dated 11.2.1988, decided all the aforesaid appeals by a common judgment, by which the appeals filed by the State of Rajasthan and Border Security Force (appellant) were dismissed, whereas the appeal filed by the claimants was allowed. Being aggrieved with the said judgment, the appellant has filed this Special Appeal Under Section 18 of the Rajasthan High Court Ordinance, 1949, impleading the State of Rajasthan as proforma respondent. The claimants-respondents No. 4 and 5 filed caveat and challenged the maintainability of the Special Appeal on the ground that Section 54 of the Act provides only one appeal to this Court and as such the Special Appeal submitted by the appellant is not maintainable. This court vide its order dated 16.11.1988, after hearing counsel for both the parties rejected the preliminary objection of the claimants- respondents No. 4 and 5, and held that Special Appeal, Under Section 18 of the Rajasthan High 'Court Ordinance was maintainable. Later on, the appeal was admitted on 20.11.1991. Apprehending the objection of the claimants regarding maintainability of the appeal, the State of Rajasthan i.e. the respondent No. 1 filed an application and prayed that it be transposed as appellant. The claimants-respondents filed a detailed reply and contested the said application mentioning therein that the appeal filed by the State of Rajasthan, against the order passed by learned Civil Judge, Jodhpur, was dismissed by learned Single Judge and as the State of Rajasthan did not file any appeal against that judgment, hence after the expiry of period of limitation, the order passed by the learned Single Judge became final

and as such the, State of Rajasthan can not be transposed as appellant. This application submitted by the State of Rajasthan was listed for orders before us. Counsel for the respondents raised an objection that as the appeal itself is not maintainable, hence the application filed by the State of Rajasthan for transposition deserves to be dismissed. Their next objection is that against the order passed by learned Civil Judge, on an application of Reference, only one appeal Under Section 54 of the Act is provided to this Court. The appeal filed by the appellant against the order of learned Civil Judge, Jodhpur, has already been dismissed by learned Single Judge, vide his judgment dated 11.2.1988, and as such this second appeal or special appeal is not maintainable. As mentioned above, this objection of the claimants-respondents had already been rejected by this Court, vide its detailed order dated 16.11.1988, and as such that order became res judicata and the claimants-respondents can not be permitted to raise the same objection again. Our view is based on a Judgment of Apex Court, passed in Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr., reported in : [1960]3SCR590 , wherein it has been held as under:

The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding.

3. On the first objection regarding maintainability of appeal, counsel for the claimants-respondents submit that the appellant is not an interested person. He is simply a beneficiary and as such has no right to file any appeal against the judgment passed by learned Single Judge and in support of their arguments, they placed reliance on The Andhra Pradesh Agricultural University, Rajendranagar v. Mahmoodunnisa Begun and Anr. (F.B.) : AIR 1976 AP134 and Neyveli Lignite Corporation Ltd. v. Rangaswamy and Ors. (F.B.) reported in : AIR1990 Mad160 . In both these judgments it has been held that a person for whose benefit land was acquired under the Act, could not be said to be a person interested, and as such he can be neither added as a party to the proceedings nor he can file an appeal, challenging the compensation amount. Their further contention is that under the circumstances the State of Rajasthan can not be transposed as an appellant.

4. On the other hand, counsel for the appellant Shri P.P. Choudhary submits that the appellant for whose benefit the lands were acquired is an interested person and as such is a necessary party in the proceedings and can also file an appeal challenging the order passed in reference and he can also file appeal against the judgment passed by learned Single Judge. In support of his arguments, he placed reliance on New Okhla Industrial Development Authority (NOIDA) Dist. Ghaziabad v. Ram Bat and Anr. : AIR1991 All68 , National Thermal Power Corpn. v. Raghunath Pd. and Ors. : AIR1981 All344 and Gordham housing Society v. Behari Lal (1980 All. Civ. J. 345).

5. We have heard learned Counsel for the parties and gone through the rulings cited by them.

6. The question as to whether a body, local-authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay compensation, is included in the definition of 'person-interested' has been decided by the Apex Court in its judgment reported in Himalaya Tiles and Marble (P.) Ltd., v. Francis Victor Coutinho (dead) by L.R'S : [1980]3SCR235 . In the aforesaid judgment, the Hon. Supreme Court held as under:

It seems to us that the definition of 'a person interested' given in S. 18 is an inclusive definition and must be lib erally 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. In the instant case it is not disputed 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 can not 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 seing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce evidence on the question of the quantum of compensation.

7. And again'.How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land we are, therefore, unable to agree with 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. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefore because both these factors concern its future course of action and if decided against him seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.

8. This view was reiterated by Apex Court in Neelagang Bhai v. State of Krnataka : [1990]3SCR20 , Krishi Upaj Mandi samiti v. Ashok Singhal and Ors. (1991 (Suppl. 2 SCC 419), Union of India v. Sher Singh and Ors. (1993) SCC 608 and Bihar State Electricity Board v. State of Bihar and Ors. (Civil) Appeal Nos. 1577 - 1600/94 1577 - 1600/94 dt. 21 2.1994. In Union of India and Anr. v. D.J. Udhampur and Ors. (1994 II AD S.C. (C) 593), it has been held as under:

Thus it is settled law that the requisitioning authority is a person interested since it is interested in the fixation of the proper and just market value or compensation in their presence after laying necessary and relevant evidence but also to secure valid title to the land acquired so that land acquisition officer and the court determines just and proper market value of the lands. It is, therefore, clear that the appellant is a proper and necessary party Under Order 1, Rule 10 C.P.C. It is also the person interested Under Section 2(d) of the Act. Accordingly, the view of the

High Court that the appellants are not interested person is clearly illegal. It is accordingly set-aside.

9. In view of the aforesaid judgment of the Hon. Supreme Court, we are of the view that the appellant is a person interested and as such the appeal filed by it is maintainable. There is no fundamental defect in the appeal and in case the State of Rajasthan is transposed as an appellant, the scope of the appeal is not going to be enlarged. Transposing a respondent as a appellant is different from impleading a new party in appeal. Under these circumstances, the question of limitation does not come in the way of respondent No. 1 from transposing it as appellant.

10. Consequently, we allow the application of the respondent No. 1 i.e. the State of Rajasthan and transpose it as an appellant in appeal. The appellant is directed to file amended cause title within 15 days. The appeal be listed before the Regular Bench for decision on merits.

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