

Hemachandra Reddy Vs. the Superintending Engineer, Civil I and General, North Madras thermal Power Project and ors.

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Court : Chennai

Decided On : Sep-22-1994

Reported in : (1995)2MLJ80

Appellant : Hemachandra Reddy

Respondent : The Superintending Engineer, Civil I and General, North Madras thermal Power Project and ors.

Judgement :

K.A. Swami, C.J.

1. This writ appeal is preferred against the order dated 27.9.1993 passed by the learned single Judge in W.P. No. 9566 of 1993. W.P. No. 9566 Of 1993 was heard along with several other connected writ petition's and a common order was passed by the leaned single Judge. All the writ petitions were allowed in the following terms:

2. the point now taken by the Tamil Nadu Electricity Board is covered by a decision in W.P. Nos.9196 and 9197 of 1992 dated 17th June. 1993 in Neyveli Lignite Corporation Limited v. P.R. Govindarajuiu and 2 Ors. (1993) 2 L.W. 37. Following the said decision, 1 quash the orders passed by the learned Subordinate Judge in the respective O.Ps. and remit the matter to the learned

Subordinate Judge for fresh disposal after giving notice to the requisitioning body and other interested persons. For the foregoing reasons, I am of the view that the awards of the Subordinate Judge passed in all the L.A.O.Ps. are illegal, ab initio void and unenforceable on the short ground of non-issue of statutory notice to the interested person viz., the writ petitioners. Hence, all the awards which are the subject matter of the writ petitions are set aside and the matter is remitted to the Sub Court, Tiruvellore. The Sub-Court, Tiruvellore is directed to issue a notice to the writ petitioners, the owners of the land and also the State of Tamil Nadu represented by the Special Tahsildar, Land Acquisition Unit, North Madras, Thermal Power Project, Ennore, Madras-57 and dispose of the O.Ps. on merits and in accordance with law within six months from the date of receipt of a copy of the order from this Court. All the writ petitions are ordered accordingly. There will be no order as to costs.

3. It is open to the Electricity Board as well as the State of Tamil Nadu to take appropriate steps for withdrawal of the appeals and for the refund of court-fee etc. in view, of the fact that the orders passed by the learned Subordinate Judge in all the above O.Ps. are now set aside. During the pendency of the appeals, passed an order permitting the land owners to withdraw 50% of the amount of compensation awarded and directed the State to deposit the remaining 50% in any Nationalized Bank or Scheduled Bank to the credit of the O.Ps. A Division Bench of this Court, on appeal, modified and passed an order permitting the respondents (land owners) to withdraw one-fourth of the same without furnishing security and another one-fourth of the amount on furnishing un-en-cumbered immovable property as security. The balance i.e., the remaining half of the amount will be invested by the Court below as a fixed deposit in a nationalized or scheduled bank on cumulative basis initially for a period of three years or till the disposal of the appeal, whichever, is later. The order was passed on 30th July, 1993, in L.P.A. No. 45 of 1993, Learned Counsel appearing for the respective parties agree and consent that the directions given by the Division Bench consisting of Ratnam and Somasundaram, JJ. in L.P.A. No. 45 of 1993 can be adopted in all these matters. Accordingly, all the landowners are permitted to withdraw one-fourth of the amount awarded by way of compensation without furnishing security and another one-fourth of the amount of furnishing unencumbered immovable property as security.

The balance, i.e. the remaining half of the amount will be invested by the court below as fixed deposit in Indian Bank, Thiruppachur, Tiruvellore in all these cases on cumulative basis initially for a period of one year or till the disposal of the O.Ps. whichever is later. It is now stated by some of the landowners that in some other cases, the State' have not deposited the compensation awarded. If so, the State is directed to deposit the entire compensation awarded within twelve weeks from today to the credit of the respective O.Ps. in the Sub-Court, Thiruvallore which in turn should immediately invest the same in Indian Bank, Thiruppachur on a cumulative basis initially for a period of one year or till the disposal of the O.Ps. whichever is later. On such deposit, the landowners are entitled to withdraw the compensation amount as indicated above. With these directions, all the writ petitions are disposed of accordingly. No costs.

We may mention here that the Land Acquisition Officer had preferred appeals against the awards which have been set aside by the learned single Judge. Those appeals also have been now withdrawn pursuant to the order under appeal as by the order under appeal those awards have been set aside. However only the petitioner in W.P. No. 9566 of 1993 has come up in appeal. Learned single Judge has held that the acquisition in question was for the benefit of the Tamil Nadu Electricity Board, herein-after referred to as 'the TNEB' and it was the TNEB which had to provide the amount to be paid to the claimants towards compensation and as such the TNEB was entitled to notice as per Clause 20(d) of the Land Acquisition Act, hereinafter referred to as 'the Act' as amended in Tamil Nadu.

2. The contention of the learned Counsel appearing for the appellant is that the notifications issued under Sections 4(1) and 6 of the Act do not specifically state that the acquisition is for the benefit of the TNEB and they only state that the acquisition is for public purpose, viz. for the North Madras Thermal Power Project. The notifications further specifically state that the compensation has to be paid out of the public revenue. Therefore, it is contended that it cannot be said that the acquisition is for the benefit of the TNEB and the compensation has to be paid by the TNEB. The awards produced in the case specifically state that the compensation is to be paid by the TNEB. It is also not disputed before us that the North Madras Thermal Power Project is to be put up and controlled by the TNEB.

Further, Explanation 2 to Section 6 of the Act, as introduced by the Amendment Act 68 of 1984 (Central Act) reads as follows:

Where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

It cannot be disputed that the TNEB is a Corporation owned and controlled by the State. Though it is governed by a specific enactment, nevertheless, it is controlled by the State, as such, the compensation paid out of the funds of the TNEB would be compensation paid out of public revenue. That being so, the recital contained in the notifications issued under Sections 4(1) and 6 of the Act that the compensation would be paid from out of public revenue would not militate against the fact that the acquisition is for the benefit of the TNEB. Therefore, we are of the view that the acquisition is for the TNEB.

3. However, learned Counsel for the appellant placed reliance on the decision of the Supreme Court in *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel and Ors.* : (1971)3SCC821 , wherein the acquisition proceedings were challenged. The Municipal Corporation for whose benefit the acquisition was proposed tried to become a party to the writ proceedings and it was held that though the acquisition is made for the benefit of the Municipal Corporation it would not be entitled to maintain the appeal filed against the order passed quashing the acquisition. The relevant portion of the judgment is as follows:

The Municipal Corporation was impleaded as the fourth respondent before the High Court but no relief was claimed against the Municipal Corporation. 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 ground 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.

Therefore, it may be pointed out that the question that falls for consideration in this appeal did not arise for consideration in the aforesaid decision of the Supreme Court. It is one thing to say that the Municipal Corporation is not entitled to participate in the proceedings challenging the acquisition and it is quite another thing to say that in the compensation proceedings the Municipal Corporation will or will not be entitled to participate. That would depend upon the provisions of the Act. Clause (d) of Section 20 of the Act as applicable to Tamil Nadu specifically provides thus:

20. Service of notice: The court shall thereupon cause a notice specifying the day on which the court will proceed to determine the objection and directing their appearance before the court on that day to be served on the following persons, namely:

(a) xxxx

(b) xxxx

(c) xxxx

(d) if the acquisition is not made for the Government the person or authority for whom it is made.

Therefore under the statute the TNEB is entitled to participate in the compensation proceedings and as such the civil court is required to issue a notice to the TNEB before deciding the reference.

4. In addition to this, the judgment in Municipal Corporation of Ahmedabad's case : (1971)3SCC821 , has been considered in a recent decision of the Supreme Court in N. Krishnamachari v. The Managing Director, Hyderabad, A.P.S.R.T.C.,

Hyderabad : (1994)6SCC74 , wherein it has been held thus:

In Ahmedabad Municipal Corporation case, the Bench has held that when the property was acquired for the benefit of the Municipal Corporation by State, though ultimately the Municipality may be benefited it has no right to file an appeal against the decision of the High Court as the Corporation is not an interested party. It would appear that Section 3(b) of the Land Acquisition Act defining of 'person interested' had not been brought to the attention of the learned Judges. When Section 3(b) defined in wide language would bring within its ambit the beneficiary to be a person interested the omission to bring to the notice the important provisions of the law constitutes an infirmity in the judgment. However in later decisions starting with Himalayan Tiles case : [1980]3SCR235 , this Court consistently has held that the beneficiary is a person interested to protect the interest which the beneficiary seeks to acquire under the notification including perfect title to the property and payment of proper compensation. Therefore, it is entitled to challenge the award when it was made without notice to it even by filing a writ petition under Article 226 of the Constitution apart from impleading itself as a party respondent in the acquisition proceedings or pending appeal or independently filing an appeal under Section 54 of the Act. In view of this later development of law we do not find that the conflict any longer subsists. Therefore, we hold that A.P.S.R.T.C. is a person interested within the meaning of Section 3(d) of the Act and that therefore it is entitled to support the validity of the notification issued under Section 4(1) of the Act when it is subject matter of the challenge in the High Court. The High Court is therefore, not right in its conclusion that the Corporation is not an interested party and the High Court has committed grievous error of law in refusing the review petition.

Therefore it is not possible to hold that the decision in Municipal Corporation of Ahmedabad's case : (1971)3SCC821 , is of any assistance to the appellant. On the contrary, the decision of the Supreme Court in N. Krishnamachari's case J.T. (1994) 5 391, supports the view taken by us and further it is clear from the said decision that the TNEB can also be considered as a party interested in the acquisition proceedings.

5. In the light of the above decision in N. Krishnamachari's case J.T.(1994) 5 391 and the provisions contained in Section 20(d) of the Act as applicable to Tamil Nadu it was necessary for the civil court to issue notice to the TNEB before deciding the reference in question. As the same has not been done the TNEB is deprived of its valuable right to participate in the acquisition proceedings and to adduce evidence to show that awarding of compensation, as claimed by the claimants, is not warranted.

6. As far as the amount paid pursuant to the award is concerned necessary safeguards have been provided by the learned single Judge in the order under appeal. Neither the TNEB nor the State is aggrieved by such directions.

7. Hence, we see no ground to interfere with the order passed by the learned single Judge. The appeal is rejected. No costs.

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