Satish Kumar Gupta And Etc. Etc vs State Of Haryana And Ors. Etc on 21 February, 2017

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Bench: Uday Umesh Lalit, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 1587-1636 OF 2017

SATISH KUMAR GUPTA ETC. ETC. …APPELLANTS

VERSUS

STATE OF HARYANA & ORS. ETC. ...RESPONDENTS

WITH

CIVIL APPEAL NOs.1637 OF 2017, 1638-1653 OF 2017, 1655-1658 OF 2017, 1659-1663 OF 2017, 1664 OF 2017, 1665-1669 OF 2017, 1670-1675 OF 2017, 1677-1691OF 2017, 1692 OF 2017, 1693 of 2017, 1694 of 2017, 1695 OF 2017, 1696 OF 2017, 1699-1701 OF 2017, 1702 OF 2017, 1703-1780 OF 2017, 1783-1852 OF 2017, 1853-1927 OF 2017, 1930-2003 OF 2017, 2004-2058 OF 2017, 2059-2111 OF 2017, 2112-2114 OF 2017, 2117-2118 OF 2017, 2123-2126 OF 2017, 2127-2128 OF 2017, 2129-2132 OF 2017, 2133-2138 OF 2017, 2139-2143 OF 2017, 2144-2145 OF 2017, 2146-2200 OF 2017, 2201-2203 of 2017, 2204 of 2017, 2205-2206 OF 2017, 2207-2214 OF 2017, 2215-2219 OF 2017, 2220 OF 2017, 2221-2223 OF 2017, 2224 OF 2017, 2226-2227 OF 2017, 2228 OF 2017, 2232-2246 OF 2017 AND 2249-2279 OF 2017.

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. These appeals have been preferred against judgment and order dated 06th October, 2015 passed by the High Court of Punjab and Haryana at Chandigarh in R.F. A. Nos.4316 of 2010 etc. etc.

2. Question for consideration is whether a post-acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation under the scheme of the Land Acquisition Act, 1894 (the Act). If not, whether the impugned order permitting additional evidence and directing remand is sustainable.

3. Facts giving rise to the question may be briefly noted. Huge chunks of land were acquired by the State of Haryana in different phases for the public purpose of setting-up Industrial Model Township by the Haryana State Industrial Development Corporation (HSIDC) in Gurgaon District in Haryana. Substantial part of the acquired land was allotted by the HSIDC to Maruti Suzuki India Limited (MSIL). One of the clauses in the Conveyance Deed executed in favour of the allottee provided that if compensation was enhanced, the allottee shall be liable to pay additional price on that basis. In HSIDC v. Pran Sukh[1], issue of compensation for land acquired in Phase I was decided by this Court. Review Petitions against the said judgment were dealt with in HSIDC v. Mawasi[2] and HSIDC v. Pran Sukh[3]. Matter of determining compensation in respect of Phase II and Phase III came-up for consideration in HSIDC v. Udal[4]. As noticed in judgment of this Court in Udal (supra), the Reference Court awarded compensation in the light of compensation determined in the judgment of this Court in Pran Sukh (supra) and other awards relating to land acquired for Phase III. Against the decision of the Reference Court, the land owners as well as the HSIDC filed appeals under Section 54 of the Act. The High Court assessed the compensation based on judgment of this Court in Pran Sukh (supra). Reference to paras 29 to 33 of the judgment of this Court Udal (supra) shows that after referring to the plea of the HSIDC that the annual increase of 12% for the time gap was erroneous in view of ONGC v. Rameshbhai Jivanbhai Patel[5] and Valliyammal v. Special Tehsildar (LA)[6], this Court found merit in the arguments of the land owners that an important piece of evidence was not taken into account which necessitated remand. The matter was remanded to the High Court for fresh disposal and it was also observed that MSIL was free to file an appropriate application for its impleadment or for leave to act as intervenor.

4. Thereafter, the matter was dealt with by the High Court in the impugned judgment. The High Court held that the allottee had a right to be impleaded as a party for the following reasons:

> a) The State or the local authority for whose benefit the land is acquired may not lead proper evidence or advance effective arguments.
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> b) A clause in the deed of allotment in favour of the allottee provides for payment of additional price as a consequence of enhancement of compensation.
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> c) As a result of enhancement of compensation by the Reference Court, the company

in question was required to pay about Rs.900 crores.

d) Under Order 1 Rule 10(2) CPC the Court can add or delete a party at any stage.

e) Section 50 of the Act provides a right to a local authority or a company for whose benefit the land is acquired to be represented before the Collector or the Court in the process of determination of compensation.

f) The principle behind giving the right of representation to a local authority or a company for whose benefit the land is acquired can also be applied to any person who is liable to pay the enhanced compensation treating such person to be the "person interested" under Section 3(b) of the Act.

5. After permitting the allottee to be impleaded as a party, the High Court also allowed application to lead additional evidence on the ground that the acquiring authority did not defend the case properly. Similar application filed by the HSIDC to lead additional evidence was also allowed and, thereafter, on considering the additional evidence it was observed that it was not possible for the High Court to assess the compensation as there was no site plan showing the location of the transactions relied. It was also considered necessary to give an opportunity to MSIL, who was impleaded for the first time. On that basis the matter was remanded to the Reference Court for fresh decision.

6. Aggrieved by the order of the High Court these appeals have been preferred. Contentions of the appellants are as follows:

i) The post-acquisition allottee had no right to be heard in the matter of compensation. Reliance has been placed on Hindu Kanya Maha Vidyalaya, Jind and anr. v. Municipal Committee, Jind and ors.[7]; Haryana State Industrial Development Corporation v. Pran Sukh and ors. (supra) and;

Peerappa Hanmantha Harijan (Dead) by legal representatives and ors. v. State of Karnataka and anr.[8]

ii) Applications for impleadment have been filed by MSIL 12 years after the acquisition and applications for additional evidence were also filed after a long delay and for the first time after remand by this Court, which could not be considered within the scope of Order XLI Rule 27 of CPC.

(iii) Application for additional evidence was rejected by this Court in the earlier round. The remand by this Court was limited to the question whether there was a need for further enhancement in the light of evidence which was not earlier considered.

7. On the other hand, learned counsel for the MSIL as well as the HSIDC and other allottees have supported the impugned judgment. They submit that since allottees have to pay the enhanced compensation, they ought to be treated as "person interested" under Section 3 (b) of the Act.

Reliance has been placed on judgments of this Court in Himalayan Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (Dead) by Lrs. [9]; Santosh Kumar and ors. v. Central Warehousing Corporation and anr.[10]; Neyvely Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition) Neyvely and Ors.[11] and; U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead) by Lrs. and Ors. [12].

8. We have given our due consideration to the rival submissions.

9. To determine the question whether the post-acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation, we may refer to the scheme of the Act. The acquisition may either be for a "public purpose" as defined under Section 3(f) or for a company under Part-VII of the Act. If the acquisition is for a public purpose (as the present case), the land vests in the State after the Collector makes an award and the possession is taken. Till the award is made, no person other than State comes into the picture. Once the land vests in the State, the acquisition is complete. Any transferee from the State is not concerned with the process of acquisition. The State may transfer the land by public auction or by allotment at any price with which the person whose land is acquired has no concern. The mere fact that the Government chooses to determine the allotment price with reference to compensation price determined by the Court does not provide any locus to an allottee to contest the claim for enhancement of compensation.

10. This legal position is well settled on principle as well as the precedent. In Hindu Kanya Maha Vidyalaya (supra) it was observed:

> "3. ... ...Indisputably the land in dispute was not acquired for the purpose of appellants instead the land was acquired for the Municipal Committee for the purpose of developing its Scheme No. 5. After the declaration of award Municipal Committee took possession of the land and thereafter transferred a portion of the same to the appellants under an agreement. In these circumstances the ratio laid down by this Court in Himalayan Tiles & Marble (P) Ltd. v. Francis Victor Countinho [(1980) 3 SCC 223] does not apply as the appellants are not interested persons and they have no right to question the award. ... ..."

11. Again, in Peerappa Hanmantha (supra) inter alia the following questions were framed for consideration.

"30.1. (i) Whether the allottee Company (M/s. Ultra Tech Cement Ltd.) is either a beneficiary or interested person entitled for hearing before determination of the market value to award just and reasonable compensation in respect of the acquired land of the appellants either before the Deputy Commissioner or Reference Court?

(ii) Whether the writ petition filed by the allottee Company before the High Court is maintainable in law?

(iii) Whether the order of remand allowing the writ petition of the allottee Company to the Reference Court is legal and valid?"

12. The above questions were answered as follows:

> "63. In view of the foregoing reasons recorded by us on the basis of the acquisition notifications issued by the State Government under the statutory provisions of the KIAD Act and therefore, we have to answer Points (i), (ii) and (iii) in favour of the landowners holding that the Company is neither the beneficiary nor interested person of the acquired land, hence, it has no right to participate in the award proceedings for determination of the market value and award the compensation amount of the acquired land of the appellants. Hence, the writ petition filed by the Company questioning the correctness of the award passed by the Reference Court which is affirmed by the High Court is not at all maintainable in law. On this ground itself, the writ petition filed by the Company should have been rejected by the High Court, instead it has allowed and remanded the case to the Reference Court for reconsideration of the claims after affording opportunity to the Company, which order suffers from error in law and therefore, the same is liable to be set aside."

13. Judgments in U.P. Awas Evam Vikas Parishad (supra), Himalayan Tiles (supra) and P. Narayanappa and anr. v. State of Karnataka and ors.[13] as mentioned in para 61 of the judgment in Peerappa Hanmantha (supra) were held to be not applicable as the same applied only when the acquisition is for a company or for the beneficiary of the acquisition as mentioned in the notification for acquisition itself. This is clear from the following:

> "61. Further, both the learned Senior Counsel on behalf of KIADB and the Company have placed reliance on various decisions rendered by this Court in support of their above respective legal submissions that the Company is an interested person and, therefore, it has got right to participate in the proceedings before the Reference Court for determination of compensation before passing the award either by the Land Acquisition Officer or the Deputy Commissioner or the Reference Court at the instance of the owner or any other interested person. These include judgments rendered by this Court in U.P. Awas Evam Vikas Parishad v. Gyan Devi, Himalayan Tiles and Marble (P) Ltd. v. Francis Victor Coutinho and P. Narayanappa v. State of Karnataka and other decisions which are not required to be mentioned in this judgment as they are all reiteration of the law laid down in the above cases.

62. The reliance placed on the various decisions of this Court by both the learned Senior Counsel on behalf of KIADB and the Company, is misplaced as none of the said judgments relied upon are applicable to the fact situation in the present case for the reason that those cases dealt with reference to the acquisition of land under the provisions of the LA Act, either in favour of the company or development authorities, whereas in the case on hand, the acquisition proceedings have been initiated under the KIAD Act for industrial development by KIADB. Further, the original acquisition record in respect of the acquired land involved in the proceedings by the learned

Standing Counsel on behalf of the State of Karnataka as per our directions issued vide our orders dated 17-11-2014[14] and 24-3-2015[15], do not disclose the fact that the acquisition of lands covered in the acquisition notifications are in favour of the Company. Thus, the acquisition of land in favour of KIADB is abundantly clear from the preliminary and final notifications issued by the State Government and thereafter following the procedure under sub-sections (6) and (7) of Section 28 of the KIAD Act, it took possession of the acquired land from the owners who were in possession of the same and was transferred in favour of KIADB for its disposal for the purpose for which lands were acquired as provided under Section 32(2) of the KIAD Act read with the Regulations referred to supra framed by KIADB under Section 41(2)(b) of the KIAD Act. Therefore, the reliance placed upon the judgments of this Court by the learned Senior Counsel on behalf of the Company and KIADB, are wholly inapplicable to the fact situation and do not support the case of the Company."

14. We are in respectful agreement with the above view in Hindu Kanya Maha Vidyalaya (supra) and Peerappa Hanmantha (supra). No contrary view of this Court has been brought to our notice. The judgments relied upon by the respondents are distinguishable as already held by this Court.

15. In Himalayan Tiles (supra) the acquisition was under Part-VII of the Act. In Santosh Kumar (supra) the question was whether award of the Collector could be challenged, to which this Court answered in the negative except on the ground of fraud, corruption or collusion. In Neyvely Lignite (supra) again the acquisition was under Part-VII of the Act and in that context this Court held that the expression "person interested" could include a company or local authority for whose benefit the land was acquired. The post-acquisition allottee cannot by any stretch of imagination be treated at par with beneficiary for whom the land was acquired. In U.P. Awas Evam Vikas Parishad (supra), the matter dealt with was in the context of statutory authority for whom the land was acquired. Delhi Development Authority v. Bhola Nath Sharma (dead) by Lrs. and ors.[16] was a case in the context of beneficiary for whom the land was acquired.

16. The only other justification in the impugned judgment which has been relied upon by the respondents is lack of sincerity on the part of the State authority for whose benefit the acquisition has been made viz. HSIDC, which by itself cannot be a valid ground to permit post-acquisition allottee to be treated as a necessary or proper authority under Order I Rule 10 of CPC to proceedings for determination of compensation. The view taken in the impugned judgment cannot be sustained on any principle or precedent.

17. We may now refer to an order of this Court dated 15th July, 2004 which has been relied upon in the impugned judgment in para 31. There is no consideration of the principle of law and thus, the said order without there being contest on the principle of law could not be treated as a precedent for deciding the legal issue at hand.

18. Accordingly, we hold that the post-acquisition allottee has no locus to be heard in the matter and is neither a necessary nor a proper party.

19. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. No case was made out for permitting additional evidence on settled

principles under Order XLI Rule 27 of CPC. The provision is reproduced below:-

> "27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –
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> (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
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> (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.
>
> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case[17]. There was no ground for remand in these circumstances.

21. We may also refer to the argument that this Court, while remanding the matter in the earlier round, had given liberty to the MSIL to file an application for impleadment or to act as an intervenor which implied that such application was to be accepted. We do not find any merit in this contention also. It cannot be held that any right was crystalised by the said observation and such prayer had to be considered according to law. We have already held that the post-acquisition allottee had no right in the matter.

22. For the above reasons, we allow these appeals and set aside the impugned order and remand the matter to the High Court once again for fresh decision in accordance with law. The parties are directed to appear before the High Court on 27th March, 2017.

.....J. [ADARSH KUMAR GOEL] .....J. [UDAY UMESH LALIT] NEW DELHI;

FEBRUARY 21, 2017.

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[2] (2010) 11 SCC 175 [4] (2012) 7 SCC 200 [6] (2012) 7 SCC 721 [8] (2013) 14 SCC 506 [10] (2008) 14 SCC 745 [12] (2011) 8 SCC 91 [14] 1988 (Supp) SCC 719 [16] (2015) 10 SCC 469 [18] (1980) 3 SCC 223 [20] (1986) 2 SCC 343 [22] (1995) 1 SCC 221 [24] (1995) 2 SCC 326 [26] (2006) 7 SCC 578 [28] Peerappa Hanmantha Harijan v. State of Karnataka, SLP(C)No. 19819 of 2013, order dated 17-11-2014 (SC), wherein it was directed:

> "Issue notice to the State Government. The learned counsel for the petitioners to take out notice to the learned Standing Counsel appearing for the State Government. Dasti, in addition, is also permitted. Mr. V.N. Raghupathy, learned counsel accepts notice for the State of Karnataka and Mr. Nishanth Patil, learned counsel accepts notice for Karnataka Industrial Area Development Board (for short 'KIADB'). The learned counsel appearing for the State Governument and the learned counsel appearing for KIADB are directed to produce the relevant records in respect of the proceedings relating to land acquisition involved in these matters. There shall be stay of the effect and operation of the impugned order during the pendency of these petitions. List the matters after four weeks. In the meanwhile, all the respondents are at liberty to file written statements, if any." [30] Peerappa Hanmantha Harijan v. State of Karnataka, SLP(C)No. 19819 of 2013, order dated 24-3-2015(SC), wherein it was directed:
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> "Heard Ms. Kiran Suri, learned Senior Counsel for the petitioners in SLPS(C)Nos. 31624-25 of 2014 in part. List all the matters as part for further hearing. Vide order dated 17-11-2014, learned counsel for the State as well as the learned counsel for KIADB were directed to produce the relevant records in respect of the proceedings relating to land acquisition involved in these matters, record as well as the records relating to allotment of land. However, as per office records, nothing has been produced so far. In this view of the matter, the learned counsel for the State as well as the learned counsel for KIADB are directed to comply with the order dated 17-11-2014 and produce the relevant records in respect of the proceedings relating to land acquisition and the allotment of land involved in these matters before the next date of hearing. List the matters on 15-4-2015." [32] (2011) 2 SCC 54 [34] N. Kamalam v. Ayyaswami (2001) 7 SCC 503: para 19