

SHRI BADRU (SINCE DECEASED)
THROUGH L.R.HARI RAM ETC.

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v.

NTPC LIMITED (FORMERLY NATIONAL
THERMAL POWER CORPORATION LIMITED) & ORS.

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(Civil Appeal Nos.5557-5559 of 2019)

JULY 16, 2019

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Land Acquisition Act, 1894 – ss.11, 18, 23 and 54 – Appellants-landowners’ land acquired by the State-respondent no.3 for the benefit of NTPC-respondent no.1 – Land Acquisition Officer (LAO) offered Rs.3,87,383/- per bigha to the appellants as compensation– Appellants sought reference u/s.18 of the Act – Reference Court enhanced the compensation to Rs.5,00,000/- per bigha – State and NTPC filed appeals before the High Court – Appellants filed cross objection u/Or. XLI, r.22, CPC in the said appeals and sought further enhancement in the compensation – Appeals dismissed by the High Court, consequently, the cross objection filed by the appellants were also dismissed – Held: Appellants had two remedies to question the legality or/and correctness of the award passed by the Reference Court – One remedy was by way of appeal u/s.54 of the Act and the other remedy was to file cross objection u/Or. XLI, r.22, CPC in the appeal filed by the State/NTPC – Landowners took recourse to second remedy – High Court having dismissed the appeals filed by the State/NTPC, was required to examine as to whether any case was made out by the appellants – High Court, however dismissed the cross objection without assigning any reason – Or.XLI, r.22(4) provides that where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit – Merely because the High Court dismissed the appeals filed by the respondents though on merits, yet that by itself would not result in dismissal of the landowners’ cross objection also – Cross objection had to be disposed of on its merits

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- A *notwithstanding the dismissal of the appeals as provided u/Or. XLI, r.22, CPC by assigning reasons – It was obligatory on the part of the High Court to have independently examined the issues raised by the appellants – Case remanded to High Court for deciding the cross objection filed by the appellants in accordance with law –*
- B *Code of Civil Procedure, 1908 – Or.XLI, r.22.*

Allowing the appeals, the Court

- HELD: 1.1** Two questions fell for consideration before the High Court: first, whether the Reference Court was right in awarding Rs.5,00,000/- per bigha by way of compensation to the landowners and second, whether any case was made out for enhancement of the amount of compensation than what was awarded to them by the Reference Court by its award dated 31.03.2009. So far as first question is concerned, it was required to be decided by the High Court at the instance of the State/NTPC in their appeals whereas so far as the second question is concerned, it was required to be decided at the instance of the landowners in their cross objection. The appellants (landowners) had two remedies to question the legality or/and correctness of the award passed by the Reference Court. One remedy was by way of appeal under Section 54 of the Land Acquisition Act, 1894 and the other remedy was to file cross objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908 in the appeal filed by the State/NTPC. In this case, the landowners took recourse to second remedy of filing the cross objection under Order 41 Rule 22 of the Code. [Paras 14-16] [998-C-F]

- 1.2** The High Court having dismissed the appeals filed by the State/NTPC was, therefore, required to examine as to whether any case was made out by the landowners (appellants herein) in their cross objection for enhancement of compensation. The High Court, in para 24, dismissed the cross objection without assigning any reason. Order 41 Rule 22(4) of the Code, provides that where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit. Merely because the High Court dismissed the appeals filed by the respondents herein though on merits,

yet that by itself would not result in dismissal of the landowners' cross objection also. The cross objection had to be disposed of on its merits notwithstanding the dismissal of the appeals as provided by in Order 41 Rule 22 (4) of the Code by assigning reasons. Even though the High Court dismissed the appeals of the State/NTPC on merits yet it was obligatory on the part of the High Court to have independently examined the issues raised by the landowners (respondents in appeal) before the High Court in the cross objection with a view to find out as to whether any case was made out on facts by the landowners for further enhancement in the compensation and, if so, to what extent. The question as to whether any case for enhancement of compensation is made out or not was required to be decided on appreciation of the evidence adduced by the parties on the issue of market value of the acquired land keeping in view the parameters laid down in Section 23 of the 1894 Act. The High Court failed to examine the aforesaid question while dealing with the cross objection of the landowners and wrongly rejected it without assigning any reason as is clear from the order quoted above. Rejection of cross objection without any discussion and reason cannot be countenanced. It is not, therefore, legally sustainable. [Paras 17-22] [998-G-H; 999-A-F]

1.3 The impugned order insofar as it relates to dismissal of the appellants' (landowners) cross objection (Para 24) is set aside. The case is remanded to the High Court for deciding the cross objection filed by the appellants (landowners) in accordance with law with a view to find out as to whether any case on evidence is made out by the appellants (landowners) for claiming further enhancement of the amount of compensation determined by the Reference Court and, if so, to what extent and, if not, why. The High Court will first verify as to whether the landowners have valued their claim made in the cross objection and, if so, whether they paid ad velorum court fees on the claim. If the landowners neither valued and nor paid the ad velorum court fees on the claim, they shall be granted reasonable time to first value their claim and pay ad velorum court fees on such claim. Once the court fees, as required under the Court fees Act, is paid by the landowners, the cross objection be decided strictly in accordance

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A **with law without disturbing the main order passed in the appeals filed by the State/NTPC which has attained finality. The High Court would accordingly decide the cross objection on its merit strictly in accordance with law without being influenced by any of the observations made in this order. [Paras 25, 26] [1000-B-D]**

B **CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.5557-5559 of 2019**

From the Judgment and Order dated 20.04.2017 of the High Court of Himachal Pradesh at Shimla in RFA No. 221 of 2011 with Cross Objection No. 39 of 2014 and RFA No. 246 of 2011

C Ms.Radhika Gautam, Adv. for the Appellants.

Vikas Mahajan, AAG, Aakash Varma, Anil Kumar, Vinod Sharma, Ms.Laxmi Kumari, Puneet Taneja, Advs. for the Respondents.

The Judgment of the Court was delivered by

D **ABHAY MANOHAR SAPRE, J.**

1. Leave granted.

E 2. These appeals are filed against the final judgment and order dated 20.04.2017 passed by the High Court of Himachal Pradesh at Shimla in R.F.A. No.221 of 2011 with Cross Objection No.39 of 2014 and R.F.A. No.246 of 2011 whereby the High Court dismissed the appeals filed by the respondent-NTPC and, in consequence, rejected the Cross Objection filed by the appellants herein.

F 3. A few facts need mention hereinbelow for the disposal of these appeals, which involve a short point.

4. The appellants herein are the claimants (landowners) whereas the respondent No.1 is the NTPC-a Government Company for whom the land in question was acquired for public purpose and respondent Nos. 2 and 3 are the State and the Land Acquisition Collector.

G 5. The land in question (hereinafter called the “the suit land”) belonged to the appellants. The suit land was acquired by the State (respondent No. 3) for the benefit of NTPC (respondent No. 1) for execution of public purpose under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”). This led to initiation of proceedings for determination of compensation payable to the landowners

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(appellants herein) under Section 11 of the Act by the Land Acquisition Officer (LAO). A

6. By award dated 12.07.2006, the LAO offered Rs.3,87,383/- per bigha to the appellants as compensation for the suit land. The appellants felt aggrieved and sought reference under Section 18 of the Act to the Civil Court for determination of the compensation offered by the LAO. B

7. The Reference Court (Civil Court) by award dated 31.03.2009 partly allowed the reference in favour of the appellants and enhanced the compensation from Rs.3,87,383/- to Rs.5,00,000/- per bigha. In other words, the Reference Court, after appreciating the evidence, held that the appellants are entitled to claim compensation at the rate of Rs.5,00,000/- per bigha. C

8. The State and NTPC felt aggrieved by the award of the Reference Court and filed appeals before the High Court of Himachal Pradesh under Section 54 of the Act. The appellants instead of filing regular appeal against the award of reference Court filed cross objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) in the respondents’ appeals and sought enhancement in the compensation awarded by the Reference Court to them. D

9. By impugned order, the High Court dismissed the appeals filed by the NTPC/State and, in consequence, also dismissed the cross objection filed by the appellants. The effect of the dismissal of the appeals and cross objection was upholding of the award passed by the Reference Court (Civil Court). The landowners felt aggrieved by the rejection of their cross objection and they have filed the present appeals by way of special leave in this Court. E F

10. So, the only question, which arises for consideration in these appeals, is whether the High Court was justified in dismissing the appellants’ cross objection. Since the respondents herein (State and NTPC) did not file any special leave to appeal in this Court against that part of the order of the High Court, which resulted in dismissal of their appeal, it has attained finality *qua* the respondents. G

11. In other words, we are not required to examine the question as to whether the High Court was justified in dismissing the respondents’ H

A appeals for two reasons: first, these appeals are filed by the landowners against the rejection of their cross objection and second, the respondents did not file any appeal against the dismissal of their appeal by the High Court.

12. Heard learned counsel for the parties.

B 13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside the impugned order insofar as it relates to the dismissal of the cross objection, remand the case (cross objection) to the High Court for deciding the cross objection on its merits in accordance with law.

C 14. Two questions fell for consideration before the High Court: first, whether the Reference Court was right in awarding Rs.5,00,000/- per bigha by way of compensation to the landowners and second, whether any case was made out for enhancement of the amount of compensation than what was awarded to them by the Reference Court by its award dated 31.03.2009.

D 15. So far as first question is concerned, it was required to be decided by the High Court at the instance of the State/NTPC in their appeals whereas so far as the second question is concerned, it was required to be decided at the instance of the landowners in their cross objection.

E 16. It cannot be disputed that the appellants (landowners) had two remedies to question the legality or/and correctness of the award passed by the Reference Court. One remedy was by way of appeal under Section 54 of the Act and the other remedy was to file cross objection under Order 41 Rule 22 of the Code in the appeal filed by the State/NTPC. In this case, the landowners took recourse to second remedy of filing the cross objection under Order 41 Rule 22 of the Code.

F 17. The High Court having dismissed the appeals filed by the State/NTPC was, therefore, required to examine as to whether any case was made out by the landowners (appellants herein) in their cross objection for enhancement of compensation.

G 18. We find from the impugned order that the High Court, in para 24, dismissed the cross objection without assigning any reason. The order rejecting the cross objection reads as under:

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24. Cross-objection, if any, shall also stand disposed of. A

19. Order 41 Rule 22(4) of the Code, provides that where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit. B

20. In our considered opinion, merely because the High Court dismissed the appeals filed by the respondents herein though on merits, yet that by itself would not result in dismissal of the landowners' cross objection also. In our view, the cross objection had to be disposed of on its merits notwithstanding the dismissal of the appeals as provided by in C
Order 41 Rule 22 (4) of the Code by assigning reasons.

21. In other words, even though the High Court dismissed the appeals of the State/NTPC on merits yet it was obligatory on the part of the High Court to have independently examined the issues raised by the landowners (respondents in appeal) before the High Court in the cross D
objection with a view to find out as to whether any case was made out on facts by the landowners for further enhancement in the compensation and, if so, to what extent. The question as to whether any case for enhancement of compensation is made out or not was required to be decided on appreciation of the evidence adduced by the parties on the E
issue of market value of the acquired land keeping in view the parameters laid down in Section 23 of the Act.

22. In our view, the High Court failed to examine the aforesaid question while dealing with the cross objection of the landowners and wrongly rejected it without assigning any reason as is clear from the order quoted above. Rejection of cross objection without any discussion F
and reason cannot be countenanced. It is not, therefore, legally sustainable.

23. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order insofar as it relates to dismissal of the appellants' (landowners) cross objection (Para 24) is set G
aside.

24. The case is remanded to the High Court for deciding the cross objection filed by the appellants (landowners) in accordance with law with a view to find out as to whether any case on evidence is made out H

- A by the appellants (landowners) for claiming further enhancement of the amount of compensation determined by the Reference Court and, if so, to what extent and, if not, why.

25. The High Court will first verify as to whether the landowners have valued their claim made in the cross objection and, if so, whether they paid ad velorum court fees on the claim. If the landowners neither valued and nor paid the ad velorum court fees on the claim, they shall be granted reasonable time to first value their claim and pay ad velorum court fees on such claim. Once the court fees, as required under the Court fees Act, is paid by the landowners, the cross objection be decided strictly in accordance with law without disturbing the main order passed in the appeals filed by the State/NTPC which, as mentioned above, has attained finality.
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26. We, however make it clear that we have not applied our mind to the question as to whether any case was made out by the appellants (landowners) for any enhancement in award of compensation. The High Court would accordingly decide the cross objection on its merit strictly in accordance with law without being influenced by any of our observations made in this order.
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