

## **Abdul Rasak And Ors vs Kerala Water Authority And Ors on 25 January, 2002**

**Equivalent citations: AIR 2002 SUPREME COURT 817, 2002 (3) SCC 228, 2002 AIR SCW 477, 2002 (1) SCALE 538, 2002 (3) SRJ 241, (2002) 1 JT 652 (SC), 2002 (1) JT 652, 2002 (1) SLT 631, 2002 (2) UPLBEC 1601, (2002) 2 MAD LJ 48, (2002) 2 UPLBEC 1601, (2002) 1 ALL WC 706, (2002) 2 LANDLR 356, (2002) 1 SCJ 475, (2002) 1 LACC 356, (2002) 1 SUPREME 442, (2002) 2 ICC 837, (2002) 1 SCALE 538, (2002) 2 BLJ 418, (2002) 2 CIVLJ 573, (2002) 1 CURCC 138**

**Bench: R.C. Lahoti, Brijesh Kumar**

CASE NO.:

Appeal (civil) 704-726 of 2002

PETITIONER:

ABDUL RASAK AND ORS.

RESPONDENT:

KERALA WATER AUTHORITY AND ORS.

DATE OF JUDGMENT: 25/01/2002

BENCH:

R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:

JUDGMENT 2002 (1) SCR 615 The following Order of the Court was delivered : Leave granted.

Under Notification dated 19.07.1981, issued under Section 4 of Land Acquisition Act, 1894, the State of Kerala acquired land for the benefit of Public Health Engineering Department of the State Government. On 27.08.1982, possession was taken over the acquired land. Sometime in June, 1983 a declaration under Section 6 of the Land Acquisition Act was made. The Collector (Land Acquisition) initiated proceedings for assessing the amount of compensation payable and made an Award on 15th June, 1986. The claimants sought for a reference to the Civil Court seeking enhancement in the quantum of compensation which was made. These reference applications came to be decided by different awards made by the Civil Court between 1989 and 1991.

With effect from 1st April, 1984, the State of Kerala, through an executive order, constituted Kerala Water Authority (K.W.A., for short) as a statutory Corporation. The Kerala water Supply and Sewerage Act, 1986 (Act No. 14 of 1986), which was given a retrospective operation with effect from 1st day of March, 1984 declared Kerala Water Authority to have been constituted under the Act.

The State of Kerala and Kerala Water Authority preferred appeals, laying challenge to the several awards made by the Civil Court and for enhancing the amount of compensation. During the pendency of appeals before the High Court, came the Constitution Bench decision of this Court in *U.P. Awasthi v. State of U.P.* [1995] 2 SCC 326, wherein it was held that the company for whose benefit the land was acquired was also entitled to appear and adduce evidence for the purpose of determining the compensation. One of the grounds which persuaded the Constitution Bench in forming that opinion was that the amount shall have to be paid by the local authority and, therefore, it was a proper party entitled to contest the proceedings. We need not reproduce in extenso the law laid down by the Constitution Bench. For our purpose, it would suffice to note that in the opinion of the Constitution Bench, the right conferred on the local authority under Section 50(2) of the Land Acquisition Act, in the light of the scheme of the Act, carried with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up; the local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard; in the event of enhancement of amount of compensation by the reference court if the Government does not file any appeal, the local authority can file an appeal against the award in the High Court after obtaining leave of the Court. The Constitution Bench, however, added a rider to its judgment that the law laid down by it would not have the effect of re-opening the matters which stand finally concluded.

It cannot be doubted that on 20th October, 1994, the date on which the Constitution Bench delivered its judgment, the matters relating to compensation in the present case had not achieved the finality and had not stood finally concluded inasmuch as the same were pending in appeal in the High Court and appeal is a continuation of original proceedings. So far as the award given by the Collector is concerned, that can be said to have become final before the date of decision of Constitution Bench but not the award given by the Civil Court on reference.

The High Court, in its impugned judgment, formed an opinion that the law laid down by the Constitution Bench governed the cases at hand and, therefore, the award given by the Civil Court on reference, stood vitiated for want of notice to K.W.A. The High Court allowed all the appeals pending before it and remanded the case for decision afresh by the reference court, after affording the parties an opportunity of adducing evidence in support of their respective contentions. Feeling aggrieved by the order of remand, the claimants have filed these appeals, by special leave.

Shir T.L.V. Iyer, the learned senior counsel for the claimant-appellants has submitted that Kerala Water Authority is successor of Public Health Engineering Department of the State Government, and bound by the proceedings conducted by or against the State Government and, therefore, the Constitution Bench decision does not have any applicability to the facts of the present case and the High Court ought not to have set aside the awards and remanded the cases to the reference court. We find it difficult to subscribe to the view so forcefully canvassed by the learned senior counsel for the appellants. K.W.A. came into existence as a statutory Corporation on 1st April, 1984. It may be said to have succeeded to the liability incurred by the State Government so far as the quantum of

compensation awarded by the Collector is concerned but so far as the enhancement in the quantum of compensation is concerned, it will be a liability of the K.W.A. incurred by it after its coming into existence and, therefore, to the extent of enhancement, the Authority was certainly entitled to notice and right to participate in the proceedings before the reference court leading to enhancement of compensation.

Learned counsel for the claimant-appellants also submitted that Superintending Engineer of the K.W.A. had appeared as a witness in the proceedings before the Civil Court and, therefore, it can be inferred that the Authority was aware of the proceedings and if it did not promptly take steps for impleadment, it should not have been heard to complain before the High Court that it did not have notice of the proceedings and, that it was denied participation in the proceedings before the Civil Court. It has been held by this Court in *Agra Development Authority v. Special Land Acquisition Officer and Ors.*, [2001] 2 SCC 646 that where land was acquired at the cost of local Development Authority, a notice to it was mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matters as to compensation were discussed, was not a sufficient compliance with Section SO of the Land Acquisition Act.

In our opinion, the High Court has not erred in taking the view which it has taken and directing the reference cases to be remitted to the Civil Court consistently with the law laid down by the Constitution Bench, as K.W.A. shall have to be impleaded as party to the proceedings before civil court from very beginning a retrial becomes unavoidable.

However, the learned counsel for the appellants submitted that certain directions are called for inasmuch as some of the witnesses examined by the claimants may not now be available and the claimants should not be made to suffer if the K.W.A. were to contend before the Civil Court for the evidence of such witnesses being excluded from consideration because their statements were not recorded in the presence of the Authority. He further submitted that in the peculiar facts and circumstances of these cases, when the Authority has succeeded to the State Government (Public Health Engineering Department), and the cases are being remitted to Civil Court for no fault of claimants, some protection deserves to be given to the claimants for protecting them from any likely injustice. We find merit in the submission so made.

Keeping in view the fact that the Constitution Bench judgment of this Court was delivered during the pendency of appeals before the High Court and the manner in which K.W.A. also came to be constituted after commencement of land acquisition proceedings and the delay which has already taken place in the conclusion of the proceedings for finalising compensation which delay is not attributable to the claimants though, we maintain the order of remand made by the High Court but make the following directions :

1. The Kerala Water Authority shall be deemed to have been brought on record in the reference cases as defendant. The cause title of the reference cases shall be amended accordingly. The K.W.A. may file its written statement to the claim petition filed by the claimants;

2. The Civil Court shall expeditiously proceed to try the reference cases in compliance with the order of remand made by the High Court;

3. The statement of the witnesses already recorded on behalf of the claimants need not be recorded afresh;

4. The Kerala Water Authority shall be allowed an opportunity of cross-

examining the witnesses which have already been examined. However, such of the witnesses as are not available, and, therefore, cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in evidence;

5. The claimants may adduce such other evidence as they may propose to do and both the State of Kerala and Kerala Water Authority shall have the liberty of cross-examining such witnesses who are now examined by the claimants;

6. The Kerala Water Authority shall have the liberty of adducing such evidence as it may propose to do.

The Kerala Water Authority shall not be entitled to a separate notice of the proceedings. All the parties present in this Court are directed through their respective counsel to appear before the Trial Court on 05.03.2002.

The appeals stand disposed of accordingly.