

M/S. Neyvely Lignite Corpn. Ltd vs Special Tahsildar(Land Acquisition) ... on 19 October, 1994

Equivalent citations: 1995 AIR 1004, 1995 SCC (1) 221, AIR 1995 SUPREME COURT 1004, 1995 AIR SCW 995, 1995 (1) SCC 221, (1995) 1 SCJ 387, (1995) 1 APLJ 57(1), (1994) 3 CURCC 642, (1995) 1 ANDH LT 24, (1995) 1 JT 281 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, M.K Mukherjee, S.C. Sen

PETITIONER:

M/S. NEYVELY LIGNITE CORPN. LTD.

Vs.

RESPONDENT:

SPECIAL TAHSILDAR(LAND ACQUISITION) NEYVELY AND ORS.

DATE OF JUDGMENT 19/10/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

MUKHERJEE M.K. (J)

SEN, S.C. (J)

CITATION:

1995 AIR 1004

1995 SCC (1) 221

JT 1995 (1) 281

1994 SCALE (4) 1129

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. These appeals arise from the judgments of the Madras High Court in one batch in C.R.P. Nos. 1141-1351/87 and batch dated April 7, 1989 and another batch from a judgment of the full bench

rendered in M/s. Neyvely Lignite Corpn. Ltd. v. P. Ramaswami Naidu & Ors. etc. etc., AIR 1990 Mad.

160. Notification under section 4(1) of the Land Acquisition Act 1 of 1894 for short 'the Act' was published in the year 1975 acquiring a large extent of 5200 acres of land for the, purpose of excavating inferior quality of the coal in South Arcot District in the State of Tamil Nadu. The Tehsildar, the Land Acquisition Officer awarded compensation in the years 1977- 80 under s. 11 of the Act. Dissatisfied therewith the claimants sought and secured over 2000 references under s. 18 to the Civil Court, namely, the Subordinate Judge, Cuddalore. In some of which the Civil Court made awards and decrees under s.26. In the pending references the appellant sought to be impleaded as a party respondent to adduce evidence for fixation of the proper compensation. The Civil Court dismissed the applications holding that the appellant is not an interested person by a common order dated November 28, 1986. The High Court in the revisions by judgment dated February 16, 1987 up held the order of the Civil Court. In the appeals filed by the State under s.54, the appellant sought to be impleaded as a party-respondent which were turned down holding that the appellant is not a person interested. Against that a batch of appeals have been filed here. The appellants also filed writ petitions challenging the validity of the award and decree made under s.26 by filing writ petitions. The full bench held that the appellant is not a person interested. Therefore, dismissed the writ petitions. Thus these appeals have been filed by special leave.

2. When the appeals had come up on May 3, 1991 before a bench of two Judges, our learned brethren made a reference to three Judges' Bench thus:

"We think that it would be proper that the entire matter including right to seek reference, to adduce evidence or to claim to be impleaded as a party before the Civil Court or its right to file appeal before the High Court against the above orders and all other allied questions are necessary to be consider by three Judges."

Thus these appeals before this bench. It is not in dispute that the entire controversy hinge upon interpretation of section 3(b) and s.50(2) of the Act whether the appellant is a person interested either to be impleaded as a party- respondent to the pending references under s. 18 to lead evidence, contest the reference and if the compensation is enhanced to file an appeal in the High Court under s.54 or to get impleaded as a party-respondent in the pending appeals filed by the land acquisition officer or to file a writ petition under Art.226 of the Constitution challenging the correctness of the award and the decree made by the Civil Court under s.26 of the Act.

3. Section 3(b) defines person interested thus:

"the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be interested in land if he is interested in an easement affecting the land.
"

4. It is an inclusive definition and all persons claiming an interest in the compensation as well as an interest in the determination of the compensation and easementary right affecting the acquired land. It is contended by Shri Bobde, learned Senior counsel for the appellant that this Court has consistently taken the view that the word "person interested" is to be liberally interpreted to include the company or the local authority for whose benefit the land was acquired since the company or the local authority is the person ultimately to bear the burden of the compensation. So it is interested to determine proper compensation payable to the land and also the person to show that the title to the land is not clear and unencumbered title is to be acquired. Shri G.L. Sanghi, learned Senior counsel supplemented by Shri S. Balakrishnan & Shri A.L. Trehan, learned counsel appearing for the claimants, resisted the contention. In substance their contention is that the word "person interested" should be interpreted-in a restricted sense ejusdem generis to mean the persons who are entitled to receive the compensation awarded by the Collector or the Civil Court alone are persons interested and are entitled to contest the correctness of the determination of the compensation or legality of the award. It is also contended that the right given under the Act is only a statutory right and not a common law right. The person interested is, therefore, the person whose interest is adversely affected by acquisition, namely, the owner of the land but not the person for whose benefit the land was acquired. Therefore, the Act cognizant to these facts has given under s.50(2) to the company or local authority only a limited right to adduce evidence in the pending references or before the Land Acquisition Collector. Therefore, the beneficiary cannot have any higher right than was given under s.50(2) of the Act.

5. The question, therefore, is whether the appellant for whose benefit the land is acquired is a "person interested"

within the meaning of s.3(b) of the Act. In *Himalayan Tiles & Marbles (P) Ltd. v. Francis Victor Coutinho (dead) by Lrs. & Ors.*, 1980 (3) SCR 235, Fazal Ali, J., speaking for the bench of two Judges considered the scope of s.3(b) and held that:

"It seems to us that the definition of 'a person interested' given in s. 18 (obviously s.3(b)) is an inclusive definition and must be liberally construed so as to embrace all person 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 cannot 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 seeing 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."

Art.243 it was concluded that:

"Thus the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. 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."

It is true that in that case the facts were that the owners of the land questioned the correctness and the legality of the acquisition proceedings and the notification issued under s.4(1) of the Land Acquisition Act. The appellant therein was a company for whose benefit the land was sought to be acquired. Therein the company sought to be impleaded as a party-respondent. The learned single Judge quashed the notification under s.4(1) and when a L.P.A. was filed, the division bench held that the appellant had no locus standi to file the appeal. Accordingly it dismissed the appeals. When its correctness was questioned this Court laid down the law as extracted hereinbefore. It is to be seen that this Court had not restricted the question for being impleaded in the proceedings under Art.226, when s.4(1) was quashed. The entire gamut of controversy has been gone into and held that the person for whose benefit the land is to be acquired or was acquired was a person interested in the determination of the proper compensation and to acquire perfect title, to the land. Therefore, such interested person is entitled to come on record to lead evidence for determination of proper compensation and also to secure valid title to the land acquired for its benefit. This decision is consistently being followed by this Court. In *Neelagangabai & Anr. v. State of Karnataka & Ors.*, 1990 (3) SCC 617. The facts were that the Civil Court on reference under s. 18, without notice to the Corporation for whose benefit the land was acquired, recorded the evidence and enhanced the compensation. The State had filed the appeal. An attempt made by the Corporation to intervene in the appeals was rejected. Therefore, the Corporation filed the writ petitions under Art.226 of the Constitution questioning the award passed by the Civil Court. On those facts, this Court held that:

"Since no notice was given to the respondent Corporation and it was thus deprived of an opportunity to place its case before the Court, the judgment rendered in the reference case was illegal and not binding on the Corporation."

It may be noted that the Karnataka Legislature made local amendment to s.20 of the Act and inserted therein clause 'c' that "if the acquisition is not made for government, the person or authority for whom it is made, the notice also shall be served under s.20 of the Act." Taking that fact and also the general principles, this Court held that the Corporation was a person interested under s.3(b) of the Act. The writ petition was held maintainable and directed the High Court to consider the matter on merits. In *Krishi Upaj Mandi Samiti v. Ashok Singhal & Ors.*, 1991 suppl. (2) SCC 419 in similar facts as in *Neelagangabai's* case, when the reference court enhanced the market value without notice to the Samiti and on appeal, this Court set aside the judgment of the High Court remitted to it for its fresh disposal.

6. In *Union of India & Anr. v. Dist. Judge, Udhampur & Ors.*, J.T. 1994 (3) SC 629, the land was acquired for the ben-

efit of Union of India for laying the Airport at Udhampur. The award made by the arbitrator under J. & K. A. & R. of Immovable Property Act was questioned by filing an appeal by the Union of India. The High Court held that the Union of India is not a person interested in determination of the compensation. When its correctness was canvassed, this Court held that when the land was acquired for the benefit of the Union of India, it is a person interested, since it is interested in the fixation of the proper and just compensation of the land acquired for its benefit as well as to see that the true extent of the land is acquired and is free from all encumbrances. Accordingly the appeal was held maintainable at its instance.

7. In *Union of India v. Sher Singh & Ors.*, 1993 (1) SCC 608, the facts were that the acquisition made by the State Government for the purpose of National Security Guard. The Union of India sought to be intervened by making an application in the pending reference on the ground that if enhancement of the compensation would be made by the Dist. Judge, it would adversely affect the Union of India and it would be deprived of an opportunity to file an appeal, in case it is not impleaded as a party. The Additional Dist. Judge dismissed the application filed by the U.O.I. and when the revision applications were heard, a full bench of five Judges held that the Union was not a person interested. On appeal this Court held that there is no necessity to resolve the conflict in the *Himalayan Tiles* case and of *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel*, 1971 (3) SCC 821 and followed the ratio in *Himalayan Tiles* case and was held that Union of India was a person interested. It would be certainly interested to see that the proper compensation was fixed so that a very heavy compensation may not have to be paid. It was also held that on the principles of equity, justice and good conscience, the Union of India should be impleaded as a person interested in the pending references.

8. In the case of *Bihar State Electricity Board v. State of Bihar & Ors.*, 1994 (2) Scale 355, the facts were that the land was acquired by the State Government for the purpose of construction of 33/11 KV Mohania Sub-station and staff quarters. After the reference made under s.18, the civil court had enhanced the compensation. The State filed the appeals and the Board sought to be impleaded as a party respondent in the pending appeals but was rejected. They filed the writ petitions and questioned the award of the civil court but the High Court dismissed writ petitions. This Court held that the Electricity Board for whose benefit the land was acquired was not only a person interested

under s.3(b) of the Act but also a necessary and proper party under Order 1 Rule 10 of C.P.C. The Board is entitled to file even an appeal by leave of the court. Accordingly instead of directing to maintain the writ petitions, this Court directed the board to be impleaded as party-respondent in the pending appeals, filed by the State and to raise all the contentions impugning the legality of the enhanced award of the civil court. In *Union of India v. Kolluni Ramaiah & Ors.*, 1994 (1) SCC 367 in an acquisition for Union of India under R. & A. of Immovable Property Act, 1952, the arbitration and in first appeal the High Court enhanced the compensation without impleading the Central Govt. On appeal a bench of three Judges of this Court set aside the High Court Order holding that Union of India ought to have been impleaded before the arbitration and the High Court and remitted the case to the High Court treating it as cross objection and directed the High Court to dispose it off.

9. In *N. Krishnamachari v. The Managing Director, APSRTC, Hyderabad & Ors.*, JT 1994 (5) SC 391, when the land was acquired for the benefit of the A.P. State Road Transport Corporation, the Notification under s.4(1) of the Land Acquisition Act was challenged by filing a writ petition under Art.226 in the High Court. When the Corporation was sought to be impleaded as a party-respondent to the writ petition the High Court held that the Corporation was not a person interested. Therefore, it dismissed the petitions. This Court held that the Corporation was a person interested and entitled to come on record. In that behalf, it was held that starting from *Himalayan Tiles* case, this Court has consistently been holding that the beneficiary is a person interested to protect the interest which the beneficiary seeks to acquire in the land 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 Art.226 of the Constitution, apart from being impleading itself as a party respondent in the acquisition proceedings or pending appeal or independently filing an appeal under s.54 of the Act. Accordingly, it was held that the Corporation was a person interested within the meaning of s.3(b) of the Act and was entitled to be impleaded as a party respondent to the writ petition to defend the validity of the notification under s.4(1) of the Act. In that case also, an attempt to make a reference for the larger bench was turned down holding that in the *Municipal Corpn. of the City of Ahmedabad's* case, the bench did not advert to the definition of the person interested under s.3(b) of the Act which had led to the bench holding that the Municipal Corporation had no locus standi to question the legality of the award of reference court.

10. *Shri Sanghi* placed a strong reliance on *Santosh Kumar & Ors. v. Central Warehousing Corpn. & Anr.*, 1986 (1) SCR 603. The facts therein were that the award made under s. 11 was challenged in the writ petition contending that the Corporation is the affected person by determination of the compensation and without impleading it, the award made was illegal, The High Court exercising its jurisdiction under Art.226 of the Constitution reduced the compensation. On an appeal, this Court had held that when the acquisition was made on behalf of the Corporation, the Collector had acted as an agent on behalf of the Government. The award is only an offer. When the Government itself cannot seek a reference under s. 18, the beneficiary also cannot seek a reference. In those circumstances, it was held that the award made by the Collector could not be questioned except when the award was vitiated by fraud, corruption or collusion. The ratio is clearly consistent with the view taken by this Court in *Harish Chandra v. Deputy Land Acquisition Officer*, 1962 (1) SCR 676. It is well settled law laid in *Ezra v. Secretary of State for India*, ILR 32 Calcutta 605 (P.C.) and

catena of precedents that the award made by the Collector is only an offer made on behalf of the State and that therefore, the State is bound by the offer made by the Collector. If the owner accepts it without protest no further proceedings was required to be pursued. But if the owner received under protest and made a valid application for reference, the amount determined by the civil court under s.26 binds the parties and concludes the proceedings subject to appeal. In that view, there is no inconsistency with the view taken in Himalayan Tiles case with the view in Santosh Kumar's case. The facts therein do not touch the controversy now in this case. Under these circumstances, the ratio in the Santosh Kumar's case renders little assistance to the respondents. However, the Ahmedabad Municipal Corpn's case is not a good law. In this view it is hardly necessary to burden the order with copious citations of contra view in plathora of precedents of the High Courts.

11.It is true that s.50(2) of the Act gives to the local authority or the company right to adduce evidence before the Collector or in the reference under s. 18 as it was specifically stated that in any proceedings held before the Collector or the Court, the local authority or the company may appear and adduce evidence for the purpose of determining the amount of compensation. However, it has no right to seek reference. Based thereon, the contention is that the limited right of adduction of evidence for the purpose of determining the compensation does not carry with it the right to participate in the proceedings or right to be heard or to file an appeal under s.54. We cannot limit the operation of s.3(b) in conjunction with subs.(2) of s.50 of the Act within a narrow compass. The right given under sub-s.(2) of s.50 is in addition to and not in substituting of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice. The consistent thread that runs through all the decisions of this Court starting from Himalayan Tiles case is that the beneficiary, i.e., local authority or company, a coop. society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal against the enhanced award and decree of the Civil Court under s.26 or of the judgment and decree under s.54 or is entitled to file writ petition under Art.226 and assail its legality or correctness. When the award made under s. 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1 Rule 10 CPC, in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1 Rule 10 CPC.. The denial of the right to a person interested is in negation of fair and just procedure offending Art. 14 of the Constitution.

12.The reasons are not far to seek. It is notorious that though the Stakes involved are heavy, the Govt. plead or the instructing officer do not generally adduce, much less proper and relevant, evidence to rebut the claims for higher compensation. Even the cross examination will be formal, halting and ineffective. Generally, if not invariably the governmental agencies involved in the

process take their own time and many a time in collusion, file the appeals after abnormal or inordinate delay. They remain insensitive even if the states involved run into several crores of public money. The courts insist upon proper explanation of every day's delay. In this attitudinal situation it would be difficult to meet strict standards to fill the unbridgeable gaps of the delay in filing the appeals and generally entail with dismissal of the appeals at the threshold without advertent to the merits in the hike in the compensation. On other hand if the notice is issued to the local authority etc. it/they would participate in the award proceedings under ss. 11 & 18 adduce necessary and relevant evidence and be heard before the Collector and the court before determining compensation. For instance that without considering the evidence in the proper perspective, the court determined the compensation.

13.If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, would be the effected person? Is it not interested to see that the appellate court would reassess the evidence and fix the proper and just compensation as per law? For instance the reference court determined market value at Rs.1,00,000/- while the prevailing market value of the land is only Rs.10,000/-. Who is to bear the burden? Suppose State appeal was dismissed due to refusal to condone the delay, is it not an unjust and illegal award? Many an instance can be multiplied. But suffice it to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the Collector and reference court under s. 18 or in an appeal under s.54, it/they would be interested to defend the award under ss. 11 or 26 or would file an appeal independently under s.54 etc. against the enhanced compensation. As a necessary or proper party affected by the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the Reference Court under s. 18 or in appeal under s.54 etc. Considered from this perspective we are of the considered view that the appellant-company is an interested person within the meaning of s.3(b) of the Act and is also a proper if not a necessary party under Order party, 1 Rule 10 of the CPC. The High Court had committed manifest error of law in holding that the appellant is not a person interested. The orders of the High Court are accordingly set aside.

14. Since the writ petitions filed by the appellants were dismissed, we set aside the orders and direct the High Court to treat them as appeals properly filed under s.54 of the Act and be dealt with along with the appeals filed by the State pending disposal in the High Court. In the pending references under s. 18, in the Court of the Subordinate Judge, Cuddalore, it is directed to order impleading the appellant as a party-respondent and would give rea-

sonable opportunity to cross examine the witness examined by the claimants and to examine witnesses on its behalf to rebut the evidence for higher compensation, the appellant is entitled to be heard in support of the determination of just and proper compensation. In this view, the need to implead the appellant as a party-respondent in the pending appeals in the High Court does not arise.

15. Against the interim orders refusing unconditional stay and directing the payment of the entire compensation, the appellants have sought leave of this court and this court by order dated March 18,

1989 directed the appellant to deposit 90 per cent of the enhanced amount and 40 per cent of the amount was directed to be withdrawn without security and 50 per cent shall be withdrawn on furnishing bank guarantee to the satisfaction of the Registrar of the High Court. The above order and the bank guarantee now pending before the Registrar of the High Court would be treated to be the conditional order in the pending appeals in the High Court and the appeals of the appellant and the appropriate orders will be passed by the High Court on the basis of the decision that would be rendered at the time of final disposal of the appeals. The appeals are accordingly allowed. But in the circumstances without costs.

IN CIVIL APPEAL NOS. 3094/90 & 4448/ 91.

16. The appellant is the Housing Board and challenged the award of the Subordinate Judge made under s.26 of the Land Acquisition Act. The contention raised by the appellant is that it is an interested party within the meaning of s.3(b) of the Land Acquisition Act and without notice to it the award and decree made under s.26 is not valid in law. The learned single Judge of the High Court following the full bench decision held that the appellant is not a person interested. Accordingly dismissed the writ petitions. Following the judgment just now rendered in C.A. Nos.246- 839/ 90 & batch, the judgments of the High Court are set aside and the appellant is a person interested within the meaning of s.3(b) of the Act and also a proper party under Order 1 Rule 10 of the CPC. Accordingly the appeals are allowed. The order of the High Court is set aside. The writ petitions filed by the appellant are directed to be treated as appeals under s.54 of the Act and be dealt with and be disposed of according to law.