Himalayan Tilesa and Marble (P) Ltd.

Vs

Francis Victor Coutinho (Dead) By Lrs

Civil Appeal No. 1098 of 1971

(Syed M. Fazal Ali, A.D. Koshol JJ)

28.03.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a judgment dated November 3, 1970 of the Bombay High Court dismissing the letters patent appeal filed by the appellant against a decision of a Single Judge allowing a writ petition filed by the first respondent.

2. The facts of the case lie within a narrow compass and may be briefly summarised as follows :

3. The appellant was a private company which was carrying on the business of manufacture and sale of artificial marbles and tiles and other accessories at village Majas Mogra, Jogeshwari, East Bombay. The company was spread over about 10 acres of land. Sometime in 1957 or 1958 the company moved the government for acquiring additional land for purposes of the company. Accordingly, on January 7, 1958, the government issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') which was followed by a separate notice by the Land Acquisition Officer acquiring the land in dispute. This was followed by another notification under Section 6 of the Act which was served on the respondent on January 25, 1960. In pursuance of these notifications the acquisition proceedings went on which culminated in an award made under Section 12 of the Act on April 11, 1961, which was published in the State Gazette on April 18, 1961. On December 11, 1961, a letter was written on behalf of the government informing the owner of the acquired land that possession would be taken on or about January 12, 1962. The purpose of the acquisition, as mentioned in the notification, was 'public purposes for which the land is needed for Himalayan Tiles and Marble (Pvt.) Ltd.' The first respondent in the writ petition filed in the High Court before a Single Judge prayed that the entire land acquisition proceedings should be quashed because the land was not acquired for any public purpose as contemplated by Section 4 of the Act. It was contended before the Single Judge that the government was not competent to a acquire the land for purposes of a private company which could not be said to be a public purpose under Section 4 of the Act. The plea taken by the first respondent found favour with the Single Judge who allowed the writ petition and quashed the land acquisition proceedings along with the notifications mentioned above.

4. Thereafter, the appellant filed and appeal before the Letters Patent Bench which confirmed the view taken by the Single Judge and dismissed the appeal mainly on the ground that the appointment had no locus standi to file the appeal before the Bench inasmuch as it was not a person interested within the meaning of Section 18(1) of the Act.

5. In support of this appeal, the learned counsel for the appellant, Dr. Chitale, has argued two points before us. In the first place it was submitted that the Division Bench of the High Court was wrong in holding that the appellant was not a person interested and therefore had no locus to file an appeal before the Letters Patent Bench. Secondly, it was argued that in view of the various amendments in the Act, particularly, in Sections 40 and 41, it could not be said that the acquisition under Section 4 was ultra vires of the Act. We might mention here that in the case of R. L. Arora v. State of U. P. (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268), majority of the Judges of this Court took the view that a mere acquisition for the benefit of a company was not a public purpose and therefore the notification made in that case was struck down. Sarkar J., however, took a contrary view. In view of the decision Parliament amended certain provisions of the Act particularly Sections 40, 41, 44-A, 44-B and added a new sub-section 5-A after Section 5. In other words, by virtue of the amendments, the basis of the decision of the Supreme Court in the first Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) was removed. By virtue of Section 7 of the amending Act, retrospective effect was given to the amendment superseding any judgment, decree or order passed before July 20, 1962. Section 7 of the amending Act may be extracted thus :

> Validation of certain acquisitions. - Notwithstanding any judgment, decree or order of any court, every acquisition of land for a company made or purporting to have been made under Part VII of the principle Act before the 20th day of July 1962, shall, insofar as such acquisition is not for any of the purposes mentioned in clause (a) or clause (b) of sub-section (1) of Section 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section and accordingly every such acquisition shall be and shall be deemed always to have been, as valid as if the provisions of Sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken ...

6. This amending Act was also challenged in the case of R. L. Arora v. State of Uttar Pradesh ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) where this Court upheld its constitutional validity subject to certain conditions. The appellant contended before us that in view of the later decision of the Supreme Court the previous decision of this Court stood superseded and the land acquisition proceedings taken even before the amendments were validated. In support of this argument, Dr. Chitale drew our attention to various provisions of the Act.

7. Before, however, deciding the question as to whether or not the proceedings taken under Section 4 were cured by the amending Act, we would first deal with the contention of Dr. Chitale that the High Court was wrong in holding that the company had no locus standi to file an appeal before the Letters Patent Bench. Learned counsel submitted that the definition of 'a person interested' in Section 18 is an inclusive one and is wide enough to include the appellant for whose benefit the land was acquired and who had pay the entire compensation in accordance with the agreement entered into by the government with the appellant. He argued that it could not be said that the appellant was not interested in defending the acquisition or in the quantum of compensation which was to be awarded by the court on a reference made by the Collector. The High Court was of the view that as the land was acquired by the government, the company had not interest in the same and was, therefore not entitled either to appear or to defend the proceedings before the court. In order to decide this question it may be necessary to extract the relevant part of Section 18(1) which runs thus :

> Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the person interested.

8. It seems to us that the definition of 'a person interested' given in Section 18 is an inclusive and must be liberally construed so as to embrace all persons 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.

9. So far as this aspect of matter is concerned there appears to be a general consensus of judicial opinion that even though the company may not have any title to the property yet it certainly as a right to appear and put forward its case in the matter of determination of the quantum of compensation. In the case of Sunder Lal v. Paramsukhdas ((1968) 1 SCR 362 : AIR 1968 SC 366 : (1968) 1 SCJ 685) this Court observed as follows :

> It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramuskhdas is a "person interested" within Section 3(b) of the Act because he claims an interest in compensation ...

It seems to us that Paramsukhdas was clearly a person interested in the objections which were pending before the court in the references made to it and that he was also a person whose interest would be affected by the objections, within Section 21. He was accordingly entitled to be made a party.

10. In the case of Hindustan Sanitary-ware and Industries Ltd., Bahadurgarh v. State of Haryana (AIR 1972 P&H 59), Pandit, J. observed as follows :

> From the facts stated above, it is apparent that the compensation amount has to be paid by the two companies. If the said amount is increased by the learned Additional District Judge on a reference under Section 18 of the Land Acquisition Act, it would be the two companies, whom would be prejudiced. ... No authority even was cited by him that under similar circumstances any court had ever held that the persons, who had actually to pay the compensation, could not be allowed to lead evidence and say that the compensation amount be not enhanced.

11. In the case of Comilla Electric Supply Ltd. v. East Bengal Bank Ltd., Comilla (AIR 1939 Cal 669 : 43 CWN 973 : (1939) 2 ILR 401 : 186 IC 17) while the High Court took the view that the

company for whose benefit the land was acquired may not strictly be an interested person yet it had undoubtedly a right to appear and adduce evidence on the quantum of compensation. In this connection, Mukherjea, J., observed thus :

> Section 50, clause (2) purports to remedy this disability and it lays down that in any proceeding held before a Collector or court in such cases to local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation. The reason is plain. It is the company or the local authority who has got to pay the money in such cases and it would be unjust to deny them the right to appear and adduce evidence which would have a bearing on the amount of the compensation money.

Roxburgh, J. made the following observations :

> Thus the first question for decision is clearly settled by the above decision and there can be no doubt that in the circumstances at present being considered the company is a person interested, as defined in the Act, and is entitled to require a reference under Section 18 unless that right is restricted by the terms of the proviso to Section 50(2).

12. In the case of M. Kuppuswami v. Special Tahsildar (L. A) II Industrial Estate, Ambathur at Saidapet, Madras ((1967) 1 MLJ 329) Venkatadri, J. interpreting the definition of 'interested person' observed as follows :

> The only question for consideration therefore is whether the petitioner is a person interested as defined in Section 3(b) of the Land Acquisition Act.

The definition section says that the expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. The expression 'person interested' is very comprehensive and it does not profess to give an exhaustive definition. The expression 'person interested' has been interpreted by various courts, and the trend of the opinion seems to be that I would give a liberal interpretation .....

On a review of the case-law on the subject it seems to me that the expression 'person interested' does not require that a person must really have an interest in the land sought to be acquired. It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims an interest in the compensation, he is a person interested within the meaning of the definition of that expression.

13. The only case which appears to have taken a contrary view is a Division Bench decision of the Orissa High Court in the case of State of Orissa through the Land Acquisition Collector, Sambalpur v. Amarandra Pratap Singh (AIR 1967 Ori 180 : ILR 1967 Cut 510), where the High Court held that the expression 'person interested' did not include a local authority or a company on whose behalf acquisition is made by the State. At the same time, it was clearly held that it was open to the company in any proceeding before the Collector or court to appear and adduce evidence for the purpose of determining the amount of compensation.

14. 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 principals 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 in 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 for 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 therefor because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.

15. The next point that was argued before us was as to whether the land acquisition proceedings are cured by Section 7 of the amending Act referred to above. Mr. V. S. Desai, appearing for the respondents, submitted that in second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 (1964) 2 SCJ 652 : 34 Com Cas 487) while upholding the constitutional validity of Section 4 and other amendments, this Court laid down certain conditions which had to be fulfilled if an acquisition made prior to July 20, 1962 was held to be valid. In this connection, reliance was placed by learned counsel for the respondents on the following passage from R. L. Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 (1964) 2 SCJ 652 : 34 Com Cas 487) :

> Therefore before Section 7 can validate an acquisition made before July 20, 1962, it must first he shown that the acquisition is complete and the land acquired has vested in government. This means that the land acquired has vested in government either under Section 16 or Section 17(1) of the Act. Thus Section 7 of the Amendment Act validates such acquisitions in which property has vested absolutely in government either under Section 16 or Section 17(1). Secondly Section 7 of the Amendment Act provides that where acquisition has been made for a company before July 20, 1962 or purported to have been made under clause (a) or clause (b) of Section 40(1) and those clauses do not apply in view of the interpretation put thereon in R. L. Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) it shall be deemed that the acquisition was for the purpose mentioned in clause (aa) as inserted in Section 40(1) of the Act by the Amendment Act. Thirdly Section 7 of the Amendment Act provides that every such acquisition and any proceeding, order, agreement, or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of Sections 40 and 41 of the Act as amended by the Amendment Act were in force at all material times when any action was taken for such acquisition. Finally this validity is given to such acquisitions and to all actions taken in connection therewith notwithstanding any judgment decree order of any court.

16. A perusal of these observations would manifestly reveal that even under Section 7 of the amending Act, and acquisition made for a company prior to July 20, 1962 must fulfill the following conditions :

(a) that the land has been acquired and is vested in government;

(b) that the acquisition has been made under clauses (a) and (b) Section 40(1); (Corrected as per His Lordship's letter dt. 16-7-1980)

(c) that the acquisition and any proceeding, order etc., shall be deemed always as valid as if the provisions of Section 40 and 41 of the Act, as amended by the amending Act, were in the force at all material times; and

(d) that by virtue of Section 7 validity to the acquisition is given to all actions taken in connection therewith in spite of any judgment, decree or order of any court to the contrary.

17. We are, however, satisfied that in the instant case the first condition adumbrated by this Court, viz., that there must be a complete acquisition before Section 7 could validate the same, has not been fulfilled at all. In this view of the matter we need not go into the other conditions indicated by this Court.

18. It was contended by Mr. Desai that according to the unchallenged pleadings of the respondents including the government, which was a party before the District Court and also before the Single Judge of the High Court, there is nothing to show that after the issue of notification the government had taken possession of the land so that it could be said that the land had vested in the government in which case alone the acquisition proceedings would have been completed. In this connection, our attention was drawn to para 1 of the petition filed by the respondents before the High Court, which runs thus :

> The petitioners have become the owners of the said lands by inheritance, and the present lands records in respect of said lands stand in the name of the petitioners. There is no dispute between the petitioners and the respondents that the petitioners are the owners of the said immovable property. The petitioners were at all times and still are in possession of the said immovable properties.

19. According to this averment, it is clearly pleaded that in spite of the notifications, the possession had not been given to the government and the respondents (petitioners before the High Court) were still in possession of the properties in question. A similar averment has been made in para 15 of the petition which may be extracted thus :

> The petitioners say that they are still in possession of the said lands and possession of the said lands has not been taken away from them and the tenants of the petitioners numbering about 53 at present are in physical occupation of the same.

20. It was also alleged that the government had threatened the petitioners in the High Court that possession would be taken through police but despite such threats given by the government, the petitioners are still in possession of the said lands and the structures were in possession of the tenants. The government in its reply affidavit did not deny these averments. On the other hand, they admitted the same. Para 8 of the reply-affidavit may be extracted thus :

> With reference to paragraph 1 of the petition, I believe the contents thereof to be substantially correct though as stated above the petitioners' names do not appear as occupants or owners in the record of rights relating to the land in question.

Similarly in para 21 of the reply, the contents of para 15 of the petition were admitted and further the fact that possession was with the petitioners, was not denied but was admitted to be correct. Para 21 of the reply-affidavit runs thus :

> With reference to paragraph 15 of the petition, I believe the contents thereof to be substantially correct.

21. Learned counsel for the appellant, however, drew our attention to a letter sent by the respondents and went on to show that possession of only one acre of land has been taken by the government. Even the High Court clearly found that possession had not been fully delivered to the government after the notification. In this connection, the Division Bench observed as follows :

On the question of possession being delivered to the government the petitioners specifically averred at the end of paragraph 15 of the petition : "The petitioners further say that notwithstanding the said letter and the threat therein contained the petitioners are still in possession of the said lands and their tenants are occupying the said structures standing thereon and possession thereof has not been taken by the respondents". They made similar averments at the end of paragraph 1 of the petition, that "the petitioners were at all times and still are in possession of the said immovable properties".

22. Admittedly, the appellant did not appear before the Single Judge in the writ petition filed by the respondents and the petition was contested only by the State. Perhaps the appellant may have thought that as its interests were fully safeguarded by the government it was not necessary for it at that stage to appear before the High Court. Even so, the pleas of both the parties taken together clearly show that the entire possession of the property did not pass to the government and thus no title vested in the government despite the notification acquiring the land. In these circumstances, therefore, it is unmistakably clear that the properties not having vested in the government the acquisition was not complete and its invalidity could not be cured by Section 7 of the amendment Act as pointed out by this Court in the case referred to above. On this ground alone the appellant must fail. Dr. Chitale however, suggested that out of 2.2 acres, possession of one acre may have been taken by the government. Assuming that to be so, until the possession of the entire land acquired was taken by the government, the acquisition could not be a complete acquisition so as to attract the operation of Section 7 of the amending Act. In this view of the matter, we are satisfied that the appellant has failed to prove that one of the essential conditions for application of Section 7 of the amending Act, which would cure the infirmities from which the acquisition proceedings suffer, has been fulfilled. The inescapable conclusion, therefore, is that the land acquisition proceedings were void and no benefit accrued to the appellant from the amending Act. The result is that the appeal fails and is dismissed but in the circumstances of the case there will be no order as to costs.

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