

SUPREME COURT OF INDIA

West Bengal State Warehousing Corporation

Vs.

Indrapuri Studio Pvt. Ltd.

C.A.No.3865 of 2006

(G.S. Singhvi and Dr. B.S. Chauhan JJ.)

19.10.2010

JUDGMENT

G.S.Singhvi, J.

1. This appeal is directed against the judgment of the Division Bench of Calcutta High Court whereby it declined to entertain the appeal filed by the appellant under Section 11(1)(f) of the *West Bengal Premises Requisition and Control Act, 1947* (for short, 'the Act') against award dated 1.1.2003 passed by the Arbitrator under Section 11(1)(e).

2. The premises belonging to respondent No.1 (covered area measuring 11,900 sq. feet and open space measuring 10,620 sq. feet) situated at N.S.C. Bose Road, Tollygunge, Calcutta was requisitioned by the State Government under Section 3 of the Act. After taking possession of the requisitioned premises, the State Government transferred the same to the appellant.

3. Since the amount of compensation payable to respondent No.1 in lieu of the requisition of its property could not be fixed by agreement, the State Government appointed an Arbitrator under Section 11(1)(b) of the Act. Though, the appellant had no role to play in the matter of determination of compensation payable to respondent No.1, on being asked by Ist Land Acquisition Collector, Calcutta, the appellant got itself impleaded as party in the arbitration proceedings.

4. By an award dated 1.1.2003, the Arbitrator held that the State Government is liable to pay as compensation Rs.1,60,21,126/- for the covered area and Rs.54,82,076/- for the open space with interest at the rate of 18% per annum.

5. During the pendency of the arbitration proceedings, the appellant represented to the State Government for appointment of a new Arbitrator by asserting that a retired judicial officer cannot be appointed to act as an Arbitrator. Thereupon, Assistant Secretary, Land & Land Reforms Department, who might not have been aware of the factum of passing of award by

the Arbitrator on 1.1.2003, sent letter dated 10.1.2003 to the Managing Director of the appellant that the judicial department of the Government had already been approached for appointment of a new Arbitrator. However, no further action appears to have been taken by the State Government for appointment of new Arbitrator.

6. After obtaining a copy of the award, the appellant filed an appeal under Section 11(1)(f), which was dismissed by the Division Bench of the High Court by observing that the appellant cannot be treated as a person interested in the compensation payable on account of requisition of the premises. The Division Bench referred to Section 6 of the Act and held that a person acquiring interest in the property does not have the right to participate in the arbitration proceedings or file an appeal against the award.

7. Shri S.B. Upadhyay, learned senior counsel appearing for the appellant argued that the Division Bench of the High Court committed serious error by refusing to entertain the appeal ignoring that the appellant falls within the definition of the expression 'person interested' contained in Section 2(d) of the Act. Learned senior counsel submitted that any person who is or is likely to be adversely affected by the award of the Arbitrator would fall within the ambit of that expression and such person is entitled to challenge the award of the Arbitrator by filing an appeal under Section 11(1)(f). Learned senior counsel further submitted that the appellant cannot be denied the right to challenge the award because it may have to reimburse the amount payable to respondent No.1 in terms of the award. In support of his arguments, the learned senior counsel relied upon the judgment of this Court in *U.P. Awam Vikas Parishad v. Gyan Devi*¹.

8. Shri A.K. Ganguli, learned senior counsel appearing for respondent No.1 argued that the High Court did not commit any error by non suiting the appellant because it is not covered by the definition of the expression 'person interested'. Learned senior counsel submitted that transfer of possession of the requisitioned premises to the appellant does not make the appellant a person interested in the amount of compensation payable to respondent No.1 and it has no right to challenge the award of the Arbitrator. Shri Ganguli distinguished the judgment of this Court in *U.P. Awam Vikas Parishad v. Gyan Devi* (supra) by pointing out that definition of the expression 'person interested' contained in Section 3(b) of the *Land Acquisition Act, 1894* (for short, 'the 1894 Act') is inclusive whereas the definition of the said expression contained in Section 2(d) of the Act is exhaustive.

9. We have considered the respective submissions. Sections 2(d), 3(1), 6, 11, 12 and 13 of the Act and Rules 7, 8, 9, 10, 13 and 15 of the Rules, which have bearing on the decision of this appeal read as under: The *W.B. Premises Requisition and Control Act, 1947*

“2. Definitions.-- In this Act, unless there is anything repugnant in the subject or context,--

(d) "persons interested" means any person claiming an interest in compensation payable on account of requisition of any premises under this Act;

3. Power to requisition.-- (1) Whenever it appears to the State Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises either with or without any or all of the furniture, if any, in such premises:

Provided that no premises exclusively used for the purpose of religious worship shall be requisitioned under this section.

6. Disposal of premises after requisition.-- When any premises have been requisitioned under sub-section (1) of section 3, the State Government may use or deal with them, for such public purpose and in such manner as may appear to it to be expedient.

11. Procedure for fixing compensation.-- (1) Where any premises are requisitioned under this Act, there shall be paid to all persons interested compensation the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, namely:-- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the State Government shall appoint a District Judge or an Additional District Judge as arbitrator;

(c) the State Government may, in any particular case, nominate a person having expert knowledge as to the nature of the premises requisitioned, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;

(d) at the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;

(e) the Arbitrator shall, in determining the amount of compensation to be awarded to the landlord, have regard to the matters referred to in clauses (a), (b) and (c) of section 12;

(f) an appeal shall lie to the High Court against an award of an arbitrator;

12. Matters to be considered in fixing compensation by agreement.-- In determining the amount of compensation which may be fixed by agreement under clause (a) of sub-section (1) of section 11, the Collector shall take into consideration--

(a) the rent payable in respect of the premises including where the premises are requisitioned with any furniture therein, the charges for the use of such furniture; (b)

if, in consequence of the requisition of the premises, the person interested is compelled to change his residence or place of business or to remove his furniture or other articles to any other place, the reasonable expenses (if any) incidental to such change or removal and

(c) the damage or loss of income (if any) sustained by the person interested between the date of service of the order under sub-section (1) or under clause (b) of sub-section 7 (3) of section 3, as the case may be, on such person and the date when the Collector takes possession of the premises.

13. Persons with whom agreement is to be entered into. -- The Collector shall enquire into the respective rights of all persons interested in the premises and shall decide whether the compensation shall be paid to any such person periodically or in lump. The compensation is to be paid periodically the Collector shall, having regard to the terms and conditions under which the premises may have been let out to a tenant, also decide whether the agreement for payment of compensation referred to in section 11 shall be entered into with such tenant or with the immediate landlord of such tenant.

Rules:

R.7. The appointment of an Arbitrator under Clause (b) of Sub-Section (1) of Section 11 shall be made by the State Government by a notification in the Calcutta Gazette to exercise jurisdiction over any specified area or in respect of any specified case or cases.

R.8. Where the amount of compensation payable under Section 11 cannot be fixed by agreement any person interested may make an application to the Collector for referring the case to arbitration with the necessary written statement of his claim. The Collector shall on receipt of such application refer the case with all relevant papers to the Arbitrator and give an intimation of such reference having been made to the person or persons interested and the State Government. Where no such application is made by any person interested within a reasonable time, the Collector himself shall refer the case to the Arbitrator and give an intimation of such reference having been made to the person or persons interested and to the State Government. R.9. Where the State Government nominates a person having expert knowledge as to the nature of the requisitioned premises to assist the Arbitrator the State Government shall inform the Arbitrator of such nomination. On receipt of the intimation, the Arbitrator shall inform the person or persons interested about the nomination with a view to enabling such person or persons to nominate an Assessor under clause (c) of sub-section (1) of Section 11. The nomination of an Assessor shall be made within fifteen days of receipt of the information.

R.10. The person to be nominated under clause 1(c) of sub- section (1) of Section 11 by the State Government and the Assessor to be nominated under the said clause by

the person or persons interested such assistance may be given such fees as may be fixed by the State Government in each case. R.13. When the Arbitrator has made his award, he shall sign it and shall give notice in writing of the making and signing thereof to the parties to the reference. He shall also send to the Collector as well as to the person or persons interested a copy of the award with a note appended thereto setting forth the grounds on which the award is based and shall also forward to the Collector the awards in original with the records of the proceedings.

R.15. Any appeal against an award of the Arbitrator shall be preferred within six weeks from the date of receipt by the Collector or by the party by whom the appeal is preferred of the copy of the award sent under Rule 13.

Provided that any such appeal may be admitted even if preferred after the said period of six weeks when the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within the said period.”

10. An analysis of the above reproduced provisions shows that in terms of Section 3, the State Government can requisition any premises needed or likely to be needed for any public purpose. Section 6 provides for disposal of premises after the same are requisitioned under Section 3(1). Under that section, the State Government has been bestowed with the power to use or deal with the requisitioned premises for the specified public purpose. Section 11(1) postulates payment of compensation for the requisitioned premises. The amount of compensation is required to be determined by either of the two modes prescribed therein. If the parties voluntarily enter into an agreement on the quantum of compensation, the amount is to be paid in accordance with such agreement. If there is a tenant in the requisitioned premises then in terms of Section 13 the Collector is required to decide whether the agreement for payment of compensation shall be entered into with the tenant or with the immediate landlord of such tenant. In case the parties cannot agree on the quantum of compensation, the State Government is required to appoint a District Judge or an Additional District Judge as an Arbitrator and notify the same in the Official Gazette [Section 11(1)(b) and Rule 7]. Rule 8 provides that where the amount of compensation payable under Section 11 cannot be fixed by agreement, any person interested can make an application to the Collector for referring the case to arbitration. Thereupon, the Collector is obliged to refer the case to the Arbitrator and give an intimation to the person or persons interested and the State Government. Where no such application is made within a reasonable time, the Collector can suo moto refer the case to the Arbitrator and give the required intimation. In terms of clause (c) of Section 11(1), the State Government is empowered to nominate a person having expert knowledge about the nature of the premises requisitioned to assist the Arbitrator. In that event, a corresponding right is available to the person to be compensated to nominate an assessor. At the commencement of the proceedings before the Arbitrator, the State Government and the person entitled to receive compensation are required to state their respective opinions as to the fair amount of compensation [Section 11(1)(d)]. Thereafter, the Arbitrator has to determine the amount of compensation keeping in view the matters enumerated in clauses (a), (b) and (c) of Section 12. Once the award is made and signed, the

Arbitrator has to inform the parties to the reference by sending a notice in writing and also send copies of the award to the Collector and the person or persons interested (Rule 13).

11. What is most significant to note is that neither at the stage of fixing the amount of compensation by agreement nor at the time of appointment of Arbitrator, the State Government is required to consult any person including beneficiary of the requisition. The only person with whom the State Government is required to negotiate the amount of compensation is the one whose premises are requisitioned. An application for reference of the case to the Arbitrator can be made only by a person who was a party to the unsuccessful exercise undertaken for fixing the amount of compensation by agreement. If the State Government nominates a person having expert knowledge as to the nature of the requisitioned premises to assist the Arbitrator, a corresponding right is available to the person whose premises are requisitioned to nominate an assessor. In terms of Section 11(1)(d), only the State Government and the person to be compensated have the right to state their respective opinions as to the fair amount of compensation. The person to whom the requisitioned premises are transferred has no role in any one of these matters. The use of expression 'the person to be compensated' in clauses (c) and (d) of Section 11(1) clinches the issue. A person like the appellant certainly does not fall in the category of the person to be compensated.

12. As a sequel to the above, it must be held that a person for whose benefit the premises are requisitioned or to whom the requisitioned premises are transferred does not have any locus to participate in the process of determination of compensation by agreement, or in the matter of appointment of an Arbitrator or reference of case to the Arbitrator or nomination of an assessor. A person like the appellant can neither submit opinion under Section 11(1)(d) as to the fair amount of compensation nor the Arbitrator is obliged to give notice and opportunity of hearing to such person under Section 11(1)(e) read with Section 12(a), (b) or (c). Therefore, such person is neither entitled to copy of the award as of right nor he can challenge the award by filing an appeal under Section 11(1)(f) and the High Court did not commit any error by declaring that the appeal filed by the appellant was not maintainable.

13. Section 3(b) of the 1894 Act, which also contains definition of the expression 'person interested' and which was interpreted by the Constitution Bench in *U.P. Awasthi v. State of U.P.*, reads as under:

“3(b). 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 deemed to be interested in land if he is interested in an easement affecting the land.”

14. A comparative study of the two definitions of expression 'person interested', one contained in Section 3(b) of the 1894 Act and the other contained in Section 2(d) of the Act shows that while the first definition is inclusive, the second definition is exhaustive. The

difference between exhaustive and inclusive definitions has been explained in *P. Kasilingam v. P.S.G. College of Technology*² in the following words:

“A particular expression is often defined by the Legislature by using the word `means' or the word `includes'. Sometimes the words `means and includes' are used. The use of the word `means' indicates that "definition is a hard- and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : *Gough v. Gough*; *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court.*) The word `includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See: *Dilworth v. Commissioner of Stamps (Lord Watson)*; *Mahalakshmi Oil Mills v. State of A.P.* The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of `college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

In *Bharat Cooperative Bank (Mumbai) Ltd. v. Employees Union*³ this Court again considered the difference between the inclusive and exhaustive definitions and observed: "When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in the definition of "banking company" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

In *N.D.P. Namboodripad v. Union of India*⁴ the Court observed:

"The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain".

Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of". In *Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner*⁵ it was held as under:

"When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "means and includes", it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression."

15. The judgment in *U.P. Awas Evam Vikas Parishad v. Gyan Devi* (supra) is clearly distinguishable. The question which fell for consideration of the Constitution Bench was whether the appellant was entitled to participate in the proceedings of the Tribunal constituted under Section 64 of the Uttar Pradesh Awas and Vikas Parishad Adhiniyam, 1965 and lead evidence on the issue of payment of compensation to the land owners. After advertng to the definition of 'person interested' contained in Section 3(b), Sections 11, 17, 18 and 50 of the 1894 Act, as amended in 1984, and making a reference to an earlier judgment in *Himalayan Tiles and Marble (P) Ltd. v. Francis Victor Coutinho*⁶ this Court held that local authority is entitled to be impleaded as a party in the proceedings before the Reference Court and in case the amount of compensation is enhanced by the Court, the local authority can file an appeal with the leave of the Court subject to the condition that no appeal is filed by the Government. The ratio of this decision cannot be invoked for declaring that the appellant falls within the definition of the expression 'person interested' within the meaning of Section 2(d) of the Act and is entitled to challenge the award of the Arbitrator because the definition which was interpreted by the Constitution Bench was inclusive and not exhaustive. The other judgments in which Section 3(b) of the 1894 Act is interpreted are likewise not relevant for deciding the issue raised in this case.

16. In the result, the appeal is dismissed. The parties are left to bear their own costs.

¹(1995) 2 SCC 326

²(1995) Supp 2 SCC 348

³(2007) 4 SCC 685

⁴(2007) 4 SCC 502

⁵(2007) 5 SCC 281

⁶(1980) 3 SCC 223