

ORISSA HIGH COURT

State of Orissa

Vs

Amarandra Pratap Singh

First Appeal No. 105 of 1964

(R.K. Das and G.K. Misra, JJ.)

10.01.1967

JUDGMENT

G.K. Misra, J.

1. The State of Orissa acquired 2.75 acres of land in village Gamdera for the Belpahar Refractory company (Respondent-2), hereinafter referred to as the Company Out of the aforesaid land. 0.22 acre belonged to Respondent-1. The Land Acquisition Collector fixed the compensation at the rate of Rs. 420 per acre and passed an award for 92.40 paise. On the objection of respondent-1, the Collector made a reference to the District Judge under Section 18 of the Land Acquisition Act for determination of compensation. The matter was ultimately heard by the learned Subordinate Judge, Sambalpur, who valued the disputed land at Rs. 3300/-. He also decreed a sum of Rs. 495/- representing fifteen per cent of the basic compensation towards solatium under Section 23 (2) of the Land Acquisition Act. Interest was granted at six per cent per annum from the date of dispossession. Against the judgment of the learned Subordinate Judge the first appeal has been filed by the State of Orissa.

2. Mr. Mohanty for the Company contended that the Company was a necessary party and that though in fact it was added as a party by the learned Subordinate Judge, no notice of the reference was given to it and that the case should be remanded and the Company, in whose interest the acquisition had been made, should be given an opportunity to adduce evidence in the matter of valuation of the disputed land. Though the cause title of the impugned judgment dated 4-9-64 indicates that the Company has been impleaded as a party to the proceeding, in fact it was not added as a party. The reference made by the Collector under Section 18 did not make the company a party to the proceeding. The cause title of the judgment showing the Company as a party appears to have been inadvertently typed by the stenographer of the learned Subordinate Judge. In fact the Company has not been impleaded as a party. Inclusion of its name in the cause title of the judgment must accordingly be ignored.

3. In law, the Company is not a necessary party to such proceedings. Under Section 18, 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 is to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. Under Section 3 (b), unless there is something repugnant in the subject or context, the expression "persons interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. Section 29 deals with service of notice. The Court shall cause a notice specifying the day on which the Court will proceed to determine the objection and directing their appearance before the Court on that day, to be served on the following persons, namely (a) the applicant, (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded, and (c) if the objection is in regard to the area of the land or to the amount of compensation, the Collector. It is quite clear that no provision has been made for issue of notice on any local authority or company on whose behalf the acquisition is to be made. The expression "all persons interested in the objection" in Section 20 (b) does not include a local authority or company on whose behalf the acquisition is made by the State. It includes only the persons as defined in Section 3(b). Under Section 21, the scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection. Section 50(2) lays down that in any proceeding held before a Collector or Court in cases where the acquisition is made for any local authority or company they may appear and adduce evidence for the purpose of determining the amount of compensation, provided that no such local authority or company shall be entitled to demand a reference under Section 18. Thus on a perusal of Sections 18, 20, 21 and 50 it would be clear that the Company is not entitled to demand a reference under Section 18 and is not a necessary party to such proceeding, though it is open to it in any proceeding before the Collector or the Court to appear and adduce evidence for the purpose of determining the amount of compensation. The scope of the inquiry envisaged in Section 21, gives full opportunity to a consideration of the interest of the company who is affected by the objection relating to the quantum of compensation. This is why opportunity is given to it under Section 50(2) for appearance and adducing evidence. The Company is, however, to avail of this opportunity without being impleaded as a party. As the local authority or the company is not a necessary party, it has no right to file any appeal against the judgment of the Court. Mr. Mohanty contended that when the Company had been given the right to appear and adduce evidence challenging the quantum of compensation, the right would be illusory and could not be exercised unless notice was given by the Court about the pendency of such a proceeding. Prima facie there is some force in this contention, but it cannot be accepted in view of the clear provision that no such Company shall be entitled to demand a reference under Section 18 and in the absence of a provision in Section 20 for issue of such notice to the local authority or the company. No injustice would be caused thereby. The acquisition is made by the State in the interest of the local authority or the company. The State is to safeguard the interest of the

company and to give it necessary intimation regarding the pendency of the proceeding under Section 18 for adducing evidence, if any. This view has been consistently taken in the reported decisions. The earliest case on the point is *Municipal Corporation of Pabna v. Jogendranarayan*¹. It was held that a Company for whose benefit the land might be acquired by the Collector was not a necessary party in land acquisition proceeding. The Company was allowed to appear and lead evidence under Section 50 for the purpose of watching the proceeding or assisting the Secretary of State and that it had no right to appeal against the decree made upon a reference. The same view has been taken in *Mandalay Municipal Committee v. Maung*². There is no contrary view. The contention of Mr. Mohanty is accordingly overruled.

4. In support of his case, respondent No. 1 examined himself as P. W. 1 and produced sale deeds (Exs. 1 and 2). After critically examining the statements of P. W. 1 and the recitals in Exs. 1 and 2, the learned Subordinate Judge was of opinion that the price of one decimal of land would not be less than Rs. 150/- on the date of the acquisition. We heard the learned Government Advocate at length. He placed the evidence of P. W. 1 and the recitals in Exs. 1 and 2 before us. P. W. 1 stated on oath that the lands near about the acquired site were sold at the rate of Rs. 150/- per decimals Exs. 1 and 2 of the year 1958 respectively show that rayati lands in mouza Samdera were sold at Rs. 200/- and Rs. 150/- per decimal. There is no evidence contra on the side of the State. The acquired land is situated in an industrial belt and has a high potential value. After going through the oral and documentary evidence we are of opinion that the view taken by the learned Subordinate Judge is right. In the result, the appeal fails and is dismissed with costs.

Das, J.

5. I agree.

Appeal dismissed.

Cases Referred.

¹13 Cal WN 116

² AIR 1929 Rang 115