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C.A.No. 2780 OF 1998
ITEM No.105

Court No. 5

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 2780 of 1998

N.T.P.C. Ltd.

Appellant (s)

VERSUS

State of Bihar & Ors.

Respondent (s)

WITH

Civil Appeal Nos. 2781-2784/1998.

Date : 14/01/2004 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N.VARIAVA
HON'BLE MR. JUSTICE H.K.SEMA

For Appellant (s) Mr. Ramesh P. Bhatt, S. Adv.
Mr. M.N. Shroff, Adv.
Mr. Chirag M. Shroff, Adv.

For Respondent (s) Mr. S.B. Sanyal, Sr. Adv.
Mr. R.K. Chaudhuri, Adv.
Mr. Krishnanand Pandeya, Adv.

Mr. S.B. Sanyal, Sr. Adv.
Mr. Ratan Kumar Choudhury, Adv.

Mr. B.B. Singh, Adv.
Mr. Kumar Rajesh Singh, Adv.

Mr. Anil K. Chopra, Adv.

UPON hearing counsel the Court made the following
O R D E R

C.A. No.2780/98

Heard parties for one hour.
The Appeal stands disposed of in terms of the signed order. No order as to costs.

C.A. Nos.2781-2784/98

The Appeals stand disposed of in terms of the signed order. No order as to costs.

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master

[Two separate signed orders in C.A. No.2780/98 and C.A. Nos.2781-2784/98 are placed on the files]

N.T.P.C. Ltd.

Appellant (s)

VERSUS

State of Bihar & Ors.

Respondent (s)

O R D E R

This appeal is against the judgment of the High Court dated 15th January, 1998.

Briefly stated, the facts are as follows:

Large track of lands were acquired for the purposes of constructing a Thermal Power Station at Kahalgaon in the State of Bihar. Not being satisfied with the amounts awarded by the Land Acquisition Officer, 1710 References were filed. Out of this 704 References have already been decided. 1006 References are still pending. From the 704 References, which have already been decided, in 212 cases the compensation awarded by the Land Acquisition Officer has been confirmed. However, in 492 cases the Reference Court has enhanced the compensation. Out of 492 cases in which compensation has been enhanced the State has filed Appeals in 302 cases and no Appeals have been filed in 190 cases.

It must be mentioned that the Appellants, who are the body on whose behalf land has been acquired had made applications for being impleaded in two References. However, their applications for impleadment had been dismissed on 4th September, 1992 and 6th January, 1993 on the ground that they were neither necessary nor proper party.

The Appellants then filed a Writ Petition in the High Court claiming that they were necessary and proper parties in all References and that they should be impleaded in all Reference which were pending. They further claimed that Awards of the Reference Court by which compensation has been enhanced should be quashed and that those cases be referred back to the Reference Court with a direction that the Appellants be impleaded as a party.

A Learned Single Judge of the High Court, by his Judgment dated 28th April, 1995, held that in all the pending References i.e. the 1006 cases the Appellants were to be impleaded as a party if not already impleaded. It was further held that in 302 Appeals, which were pending before the High Court, the Appellants could make an application for being impleaded. The learned Single Judge opined that if such applications were made, they were bound to be allowed unless and until it was shown that the Appellants had notice of the Reference proceedings and were not prejudiced. The learned Single Judge further gave liberty to the Appellants to file Appeals in the remaining 190 cases in which the Reference Court had enhanced the compensation. The delay in filing Appeals was condoned. An Appeal against this order was dismissed by the Division Bench by the impugned Order dated 15th January, 1998.

The question which arises for consideration is whether the Appellants have a right to be impleaded in all References. This question is no longer res integra. The law is settled by a Constitution Bench of this Court in the case of U.P. Awas Evam Vikas Parishad v. Gyan Devi reported in (1995) 2 SCC 326. In that case, after considering various provisions of the Land Acquisition Act, it has been held that the body on whose behalf the land is acquired is not just a necessary party but is also a proper party before the Reference Court. It has been held that not giving them notice either at the stage of fixing compensation by the Collector or by the Reference Court affects their rights. It has been held that they must be impleaded as a party in the reference proceedings.

Thereafter, in the case of Abdul Rasak v. Kerala Water Authority, reported in (2002) 3 SCC 228, a Bench of this Court, relying on the above mentioned Judgment, has held that an Award given by Civil Court on reference stands vitiated for want of notice to the acquiring body. It has been held that as the acquiring body had to be impleaded as a party to the proceedings before the Civil Court from the very beginning, a re-trial becomes unavoidable. It has been held that in such cases the matters must be referred back to the Reference Court.

Again in the case of Kanak v. U.P. Awas Evam Vikas Parishad, reported in (2003) 7 SCC 693, the above mentioned position has been reiterated.

Mr. Sanyal, however, submitted that the Constitution Bench in Gyan Devi's case (supra) had not referred the matter back to the Reference Court. He submitted that the matters were pending before the High Court. He submitted that since there was a direction that the Appellants were to be impleaded in all the pending Appeals and that they had a right to file Appeals in the remaining cases, this Court should not interfere. He submitted that the High Court was competent to and would undoubtedly consider whether or not any prejudice had been caused to the Appellants for want of notice. He submitted that the High Court would also consider whether notice had been issued to them or not. He submitted that the impugned order, therefore, needs no interference. In support of the above submission he relied upon a case in Bihar State Electricity Board v. State of Bihar, reported in 1994 Supp. (3) SCC 743 to point out that even in that case the matter was only sent back to the High Court. He pointed out that in both the above mentioned cases, the Awards were not quashed.

We are unable to accept this submission. As set out hereinabove, the law has been settled by

the Constitution Bench Judgment of this Court. In cases relied upon by Mr. Sanyal, the application of the acquiring body was to be impleaded in the Appeals which were pending before the High Court. It was in those circumstances that the matters were referred back to the High Court. Otherwise, as set out in the other two cases as mentioned above, it becomes absolutely unavoidable that the cases be referred back to the Reference Court. The right which the acquiring body has is not just a right to lead evidence before the Reference Court. The acquiring body also has a right to support the Award which has been made by the Land Acquisition Officer. This can be done by cross examining witnesses led by the claimants. Non-impleadment of the body on whose behalf acquisition has taken place, defeats this right.

Mr. Sanyal next submitted that even if the Award is quashed and the matter is remitted back to the Reference Court, there should be a direction that amounts which have been disbursed should not be recalled till after the compensation is re-fixed by the Reference Court. He submitted that at that stage the amounts could be finally adjusted. In support of this submission he relies upon the case of Agra Development Authority v. Special Land Acquisition Officer, reported in (2001) 2 SCC 646.

In our view, as the Appellants were entitled to be impleaded in the Reference proceedings, the High Court was in error in not setting aside the Awards and referring the cases back to the Reference Court with a direction that they be impleaded. The fact that amounts have been enhanced shows that prejudice has been caused to the Appellants. We, therefore, set aside the impugned Judgments except to the extent that it directs that in all pending References the Appellants will be impleaded as parties. The Awards made by the Reference Court in the 492 cases, where the amounts have been enhanced, are set aside. These cases are remitted back to the Reference Court. The Appellants shall be deemed to have been brought on record in all these cases as well as all other pending cases. The Reference Court shall try to dispose of the References as expeditiously as possible. The statement of witnesses already recorded on behalf of the claimants need not be recorded afresh. However, the Appellants shall have a right to cross-examine the witnesses, if they so desire. For that purpose those witnesses shall be recalled. If however, those witnesses cannot be recalled for a valid reason e.g. because they have died or cannot be found then their statements shall not be excluded from consideration and shall be read in evidence. All claimants shall also be entitled to adduce further evidence, if they so desire. The Appellants will be entitled to adduce evidence if they so desire.

We further direct that if the enhanced compensation has been paid to the claimants then the same shall not be recalled but shall finally be adjusted in the amount which may be fixed by the Reference Court. It goes without saying that if the enhanced compensation has not been paid, then the same shall not be paid.

The Appeal stands disposed of accordingly. No order as to costs.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi;
January 14, 2004.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.2781-2784 OF 1998

N.T.P.C. Ltd. Appellant (s)
SURENDRA PRASAD JHA AND ORS. VERSUS
Respondent (s)

O R D E R

In these appeals, the appellants were the body on whose behalf the land was acquired. The appellants had not been made parties before the Reference Court and the Reference Court by its Award has enhanced the compensation. Application made by the appellants to review the Award was rejected by the Reference Court. The appellants then filed revision petitions in which the High Court has passed the impugned order dated 24th February, 1998 stating that these revisions should be treated as appeals under Section 54 of the Land Acquisition Act.

We have today, by a separate judgment in Civil Appeal No.2780/98, held that the body on whose behalf the land is acquired is a necessary and proper party before the Reference Court. We have held that an Award passed in their absence is required to be set aside and the matter be re

mitted back to the Reference Court. For reasons set out in that Judgment, we dispose of these Appeals by setting aside the impugned Judgment as well as the Award made by the Reference Court. We remit the matter back to the Reference Court with the same directions as given in the Judgment passed in Civil Appeal No.2780 of 1998. The Appeals stand disposed of accordingly. No order as to costs.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi;
January 14, 2004.