

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1505 OF 2003

STATE OF WEST BENGAL

... APPELLANT(S)

:VERSUS:

ANIL NASKAR

... RESPONDENT(S)

WITH

**CIVIL APPEAL NOS. 1509, 1511, 1512, 1513, 1514, 1515, 1516,
1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526,
1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536,
1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1555, 1556,
1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566,
1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576,
1577 and 1578 of 2003**

ORDER

These appeals, which are 60 in number, preferred by the State of West Bengal and the West Bengal Housing Board, a body constituted and incorporated under the West Bengal Housing Board Act, 1972, are before us aggrieved by and dissatisfied with the judgment and order dated 21.12.2001 passed by a Division Bench of the Calcutta High Court, refusing to interfere with an award dated 25.8.1992 passed by the Special Land Acquisition Judge, Alipore.

The basic fact of the matter is not in dispute.

On the request made by the West Bengal Housing Board, a notification

under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (“Act” for short) was issued on 3.12.1963, pursuant where to possession of the lands was taken on 29.12.1979. The owners of the lands were said to have been paid rental compensation in terms of the provisions of the said Act, for the period 29.12.1979 to 28.8.1988.

On or before 28.2.1985, notice under Section 4(1A) of the Act was issued declaring the intention of the State to acquire a vast tract of land.

Eventually, an award was passed by the Land Acquisition Collector on or about 31.10.1988 awarding a total sum of Rs.1.42 crores. Although a large number of land owners were satisfied therewith, 31 land owners filed applications before the Collector for reference thereof in terms of Section 18 of the Act.

Indisputably, the learned Judge of the Reference Court did not issue any notice to the West Bengal Housing Board and in its absence, the parties adduced their respective evidences.

By an award dated 25.8.1992, the Reference Judge awarded a sum of Rs.59,41,337/- on the following premise:

“Sali lands (Agricultural land) @ Rs. 4726/- per Katha.
Danga + Bagan + Bastu + Chunkhola (non-agricultural land)
@ Rs. 5907/- per Katha.
Tank + Doba (pond) @ Rs. 2362/- per Katha.”

Aggrieved by and dissatisfied with the said award passed by the Reference

Judge, the State of West Bengal preferred 31 appeals before the High Court and by reason of the impugned judgment dated 21.12.2001, the said appeals have been dismissed.

Both the State of West Bengal as also the West Bengal Housing Board have contended before us that only on 10.1.2002, the latter came to know of the said judgment of the High Court when they were asked to deposit all the costs and expenditure incidental to and arising therefrom as the said expenses were required to be borne by it, as per the order of the High Court.

The West Bengal Housing Board, thereafter, upon obtaining leave of this Court, have preferred appeals. Special leave petitions were also filed by the State of West Bengal.

Mr. A. Sharan, learned Additional Solicitor General for India and Mr. Tapas Ray, learned senior counsel appearing on behalf of the State of West Bengal and the West Bengal Housing Board, inter alia, raised the following contentions:

- (1) The Reference Court failed to discharge its duties of issuing notice to the requisitioning authority, namely, the Board and thus it has been denied a reasonable opportunity to place its case before the Reference Court;**
- (2) The lands in question being low lands, consisting of Shali, Tank, Chunkhola and Bastu, the Reference Judge and, consequently, the High Court,**

committed a serious error in so far as they relied upon the exemplars involving large areas of land, whereas the land holders owned only small parcel of lands;

(3) Both the High Court as also the Reference Court failed to take into consideration that the State had to expend a huge amount for the development of the area viz. a sum of Rs.2,82,32,532.00 which was required to be deducted from the amount of compensation.

(4) The High Court wrongly opined that as only a sum of Rs. 10 per sq. ft. has been awarded to the land owners, no interference with the award of the Reference Judge was called for.

(5) The High Court by exercising its jurisdiction under Article 54 of the Land Acquisition Act, 1894 should have considered the appeals on the merit of the matter and, thus, should not have dismissed the same, almost summarily.

Mr. Alok Bhattacharya, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgments.

Section 50 of the Land Acquisition Act provides that where the provisions of the Act are put in force for the purpose of acquiring land, inter alia, at the cost of any fund controlled or managed by a local authority, the charges for any incidental to such acquisition shall be defrayed from the said fund. Sub-section (2) of Section 50 lays down that in any proceeding held before the Court or Collector, in such

cases, the local authority may appear and adduce evidence for the purpose of determining the amount of compensation.

Although sub-section (2) of Section 50 of the Land Acquisition Act provides for an enabling provision, the question in regard to interpretation thereof has come before this Court on a number of occasions.

In *U.P. Awas Evam Vikas Parishad v. Gyan Devi*, (1995) 2 SCC 326, a Constitution Bench of this Court opined:

“24. To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.
2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.
3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings, the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the ³⁴⁵ local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal, the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court, the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not

be reopened.”

Yet again, in **Kanak & Anr. v. U.P. Avas Evam Vikas Parishad & Ors.**, (2003) 7 SCC 693, a Division Bench of this Court, following the aforesaid Constitution Bench decision, held:

“37. Where an appeal has not been filed by the State, it was held that such an appeal would be maintainable with the leave of the Court. However, in **Gyan Devi** this Court did not have any occasion to consider a provision like the one contained in Section 381 of the **Mahapalika Adhiniyam** and, thus, the observations of the Court therein would not be relevant for the purpose of the present case. The High Court, having regard to the facts and circumstances of this case cannot be said to have committed any illegality in allowing the writ petition.

38. However, having said so, in our opinion, the High Court should have remitted the matter back to the Reference Court with a direction that the respondent Parishad may be impleaded as a party so as to enable it to cross-examine the witnesses examined on behalf of the claimants and examine its own witnesses and bring on record such other materials as it may deem fit and proper. It goes without saying, it would also be open to the claimants to adduce evidence to the contra.”

Similar view was taken by this Court again in **NTPC Ltd. v. State of Bihar & Ors.**, (2004) 12 SCC 96, stating :

“6. 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*. 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.”

It is not in dispute that the learned Reference Judge has failed and/or neglected to perform its statutory duty. It is also a matter of some concern that even the State of West Bengal did not bring the same to the notice of the learned Reference Judge or the High Court.

Be that as it may, having regard to the fact that the Reference Court did not issue any notice to the West Bengal Housing Board and as some arguable points have been raised by the learned counsel for the appellants before us, in our opinion, interest of justice will be subserved if the impugned judgments are set aside and the matters are remitted to the learned Reference Judge for consideration thereof afresh. It is directed accordingly.

We place on record that although the learned counsel for the parties have addressed us, also on the merit of the matters and pointed out that both the Reference Judge as also the High Court had failed to consider the legal principles

governing the grant of compensation, in view of the order proposed to be passed by us, we do not intend to enter thereinto.

We, however, direct that the West Bengal Housing Board shall file its written statements before the learned Reference Judge within three weeks from date. It shall also file all other necessary documents which are in its power and possession, within four weeks from date.

If the parties intend to adduce any other or further evidence, they may be permitted to do so wherefor a list of witnesses may be filed before the Court within six weeks from date.

The Reference Judge is hereby directed to dispose of the matter as expeditiously as possible and not later than three months from the date of receipt of a copy of this order.

We may place on record that it is stated before us that the appellants have deposited about 50% of the enhanced amount before the learned Reference Court and the said amount has been disbursed amongst the land owners.

The appeals are disposed of with aforementioned observations and directions.

The costs of the appeals before the High Court as also before this Court shall abide by the ultimate result of the matter before the Reference Court.

**.....J
(S.B. SINHA)**

.....J
(CYRIAC JOSEPH)

NEW DELHI,
NOVEMBER 6, 2008.