

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No. 7 of 2009**

NTPC Limited, through the General Manager (In-Charge) Sipat Super Thermal Power Project, Post Office Sipat, District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through the Collector Bilaspur, District Bilaspur, Chhattisgarh.
2. Land Acquisition Officer/Sub Divisional Officer, Bilaspur, District Bilaspur, Chhattisgarh.
3. Arun Tiwari S/o Late J.P.Tiwari, aged about 49 years, R/o village Sipat, Tahsil Masturi, District Bilaspur, Chhattisgarh.

---- Respondents**First Appeal (M) No. 19 of 2009**

NTPC Limited, through the General Manager (In-Charge) Sipat Super Thermal Power Project, Post Office Sipat, District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through the Collector Bilaspur, District Bilaspur, Chhattisgarh.
2. Land Acquisition Officer/Sub Divisional Officer, Bilaspur, District Bilaspur, Chhattisgarh.
3. Aditya Tiwari S/o Arun Tiwari, aged about 24 years, R/o village Sipat, Tahsil Masturi, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellants	:	Dr. N.K.Shukla, Senior Advocate with Shri Rajendra Tripathi, Advocate.
For Respondents/State	:	Shri B. Gopa Kumar, Deputy Advocate General.
For Respondent No. 3	:	Shri Mukesh Sharma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****17/11/2015**

1. These two appeals arise from separate orders dated 1.1.2009 passed by the VIII th Additional District Judge (FTC) Bilaspur in Miscellaneous Case No. 32 of 2005 and 18 of 2007 respectively pursuant to a reference made by the

Collector on an application by Respondent No. 3 under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

2. Since the facts and questions of law arising for consideration are common they have been heard together and are being disposed by a common order. As the Court is satisfied that both the appeals have to be remanded partially to the Court of District Judge, we shall take note of the facts of the case only to the extent necessary for the purposes of the present order and shall primarily notice them for convenience from First Appeal (M) No. 7 of 2009.

3. Land acquisition proceedings were conducted earlier leading to an award dated 11.12.2001. The lands were subsequently released. Fresh acquisition proceedings followed culminating in a new award dated 10.5.2002 granting compensation of Rs.14,91,014/- for 4.93 acres. The Respondent accepted the compensation under protest on 11.5.2002 and applied for Reference under Section 18 of the Act contending that 3.04 acres was capable of future residential use. The Reference was decided on 29.3.2007 in Miscellaneous Case No.38 of 2005 without hearing the Appellant. The Appellant preferred F.A (M) 84 of 2007. On 8.4.2008 the order dated 29.3.2007 was set aside and the matter was remanded for fresh hearing culminating in the order under challenge. The District Judge by the impugned orders has held that the compensation awarded was inadequate as it did not take into consideration the potential future residential use of the lands.

4. Learned Senior Counsel for the Appellant submitted that under Section 23 *first* of the Act, the market value of the land on the date of publication of the notification under Section 4(1) was to be the basis for determining the amount of compensation. Section 24 *fifthly* provided that any increase to the value of the land acquired or likely to accrue for the use to which it will be put could not be taken into consideration for determining compensation. The District Judge therefore erred in taking into consideration the possibility for any future potential

residential use of the lands even while holding that presently the acquired lands were not residential in nature. Unnecessary reliance on any administrative report with regard to the possibility of future potential use without any reference to the provisions of Section 24 of the Act makes the Award arbitrary

5. Learned Counsel for Respondent No. 3 submitted that the District Judge has adequately discussed the surrounding structures, the distance of the roads from the lands in question and relied upon the administrative reports with regard to the future potentiality for residential use of the lands in question to hold for grant of compensation of Rs. 26,25,054/- as recommended by the Revenue Officer cum Land Acquisition Officer wrongly disagreed by the Commissioner holding that the lands were purely agricultural. The order under appeal therefore did not call for any interference.

6. We have considered the submissions on behalf of the parties.

7. A total of 155.22 acres of lands were acquired for the Appellant leading to Award dated 10.5.2002. An area of 4.93 acres of lands belonging to Respondent No. 3 formed part of the same out of which 3.04 acres was claimed to be of residential character seeking compensation in accordance with the same in the Reference under Section 18 of the Act. The District Judge held that the high level committee report had recommended compensation based on future potentiality for residential use of the lands which could not be ruled out because of the acquisition and therefore determination of compensation at the rate for agricultural lands by the Commissioner was bad. The District Judge simultaneously held that on the date of acquisition there had been no conversion of the lands from agricultural to residential and the area where the lands were situated had not been declared a residential area and also that there was no development plan with regard to the same concluding that the lands were being used for agricultural purposes only. Thus effectively it was held that as on the date of the Section 4 Notification the lands were not capable of residential use. Section 23 of the Act

provides for determination of compensation on basis of the market value of the land as on the date of the Section 4 (1) Notification. In the present case as on that date it does not appear that there was any potentiality for residential use of the lands as held by the District Judge himself.

8. The Appellant relied upon AIR 1988 SC 1652 (Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona) in support of its submission that the possibility of any future potential use because of the acquisition could not be the basis for determination of compensation. Except for referring to the judgment, the District Judge did not apply his mind to the same at all to determine its applicability or inapplicability by a reasoned order. On his own *ipse dixit* he held that in view of the report of the high level committee regarding potential for future use as residential pursuant to acquisition, the Respondent was entitled to compensation at residential and not agricultural rates. In effect, the District Judge took the view that the opinion of the Committee not concurred by the Commissioner, shall have superiority over law laid down by the Courts without examining the same. There is also no discussion with regard to what may have been discussed by the Commissioner in his order and which was very relevant material for adjudication of the Reference. If a superior Court lays down any law and a party relies upon the same, the Court has a bounden duty to consider its applicability or inapplicability by a reasoned order. The manner in which the District Judge has dealt with the issue reflects of arbitrariness in administrative matters where the administrator prefers to give no reasons as he finds the cause shown difficult to reject. The order of the District Judge in its present form is also destructive of judicial discipline.

9. The District Judge was not exercising any original jurisdiction but was acting as a Tribunal of limited jurisdiction created under a statutory provision. The powers of the District Judge had therefore necessarily to be restricted and had to be exercised in accordance with the statutory prescription and limitations

governing his power including Section 24 of the Act to which there has been no application of mind whatsoever. Section 24 in its relevant extract provides :-

24. Matters to be neglected in determining compensation.—But the Court shall not take into consideration—
fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

10. We therefore find it difficult to sustain the Award in its present form pursuant to the Reference under Section 18 of the Act in so far as the basis for compensation of 3.04 acres is concerned. The impugned order dated 1.9.2009 in both the appeals are therefore set aside to that extent and the matter is remanded for fresh decision of the Reference but only to that limited extent directed in accordance with the discussions contained in the present order preferably within a maximum period of six months from the date of receipt and/or production of a copy of this order. Let the records be sent back to the Court concerned for necessary compliance.

11. The appeals are allowed to the extent indicated.

Sd/-
 (Navin Sinha)
CHIEF JUSTICE

Sd/-
 (P. Sam Koshy)
JUDGE