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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3222 OF 2013
IN
FIRST APPEAL NO. 1123 OF 2013

National Highways Authority of India (Ministry of Road, Transport & Highways, Govt of India) ...Applicant

Versus

The State of Maharashtra, through the Special Land Acquisition Office-I ...Respondent

Mr Rakesh Singh, i/b MV Kini & Co., for the Applicant.

Mr YY Dabke, AGP, for Respondent No. 1-State.

Mr Sagar Mane, i/b NV Bandiwadekar, for Respondent No. 2.

CORAM: G.S. PATEL, J

DATED: 5th July 2017

PC:-

1. This is a Civil Application by the National Highways Authority of India (“NHAI”) seeking impleadment in this Appeal filed by the State of Maharashtra against an order of the District Judge in a reference under Section 18 of the Land Acquisition Act, 1894 enhancing compensation awarded by the Special Land Acquisition Officer. It is not in dispute that the lands in question admeasuring 10 H 0 Are in Taluka Uran have been acquired for the NHAI’s NH4-B. The Applicant insists that since the lands will vest

in the NHAI and since the State Government will or may recover the acquisition amount from the NHAI, therefore, NHAI must necessarily be heard before any order is made. All of this of course in the context of an Appeal by the State Government challenging the enhancement granted by the District Judge.

2. All that this tells me is that there is a significant lack of confidence by NHAI in the State Government's ability to prosecute its own Appeal. I do not share the NHAI's reluctance or misgivings about the State Government's capabilities. The lands are in any case situated in the State of Maharashtra and it is the State of Maharashtra that has contested these proceedings from the start all along on the basis that these lands are required for this very project.

3. It is also pointed out by the Respondents that the application is wholly unsustainable. An Appeal may be filed by either a Local Authority or Company as defined under the Land Acquisition Act, 1894. NHAI is neither. It is a body corporate constituted under the National Highways Authority of India Act 1980. That does not bring it within the sweep of eligible appellants under the Land Acquisition Act.

4. In any case, the issue is no longer *res integra*. For, by his erudite decision in *Vidarbha Irrigation Development Corporation, through its Executive Engineer, Wardha v Santosh Janba Warghane & Anr*¹ ZA Haq J after an elaborate discussion and a review of the considerable learning on the subject emphatically concluded in a

1 2017 (2) Mh LJ 432 : 2016 SCC OnLine Bom 12590.

virtually identical case that the Vidarbha Irrigation Development Corporation (“VIDC”), an entity not materially different from NHAI, did not fulfil the necessary tests. In paragraph 14 of that decision, Haq J held that the principal test is that the Appellant should be a local authority; and a local authority is one that is entrusted by statute to perform such duties as are usually entrusted to municipal bodies. There are other tests as well, including the power to raise funds, levy taxes and impose rates, charges or fees and so on. The mere fact that the corporation has funds from a government resources does not make it a local authority. The VIDC was held not to be a local authority within the meaning of Section 3(31) of the General Clauses Act nor covered by Section 3(aa) of the Land Acquisition Act, 1894. The definition under the Land Acquisition Act, 1894 is inclusive, but that makes very little difference. More specifically that judgment dealt with precisely the argument that is today raised before me:²

“16.

Similarly only because the Corporation is paying the amount of compensation, it does not mean that the Corporation gets the right to file appeal under Section 54 of the Land Acquisition Act, 1894. It does not mean that the fund of the Corporation can be regarded as “public revenue” and consequently it gets the right to file appeal under Section 54 of the Land Acquisition Act, 1894. Similar situation is examined by the Hon’ble Supreme Court in the judgment given in the case of *Valjibhai Muljibhai Soneji and another vs. The State of Bombay (now Gujarat) and others* and the acquisition of land for the benefit of State Road Transport Corporation was held to be bad in law because

² Paragraph numbers follow the Mh LJ report.

though the acquisition of land was for a public purpose, it was found that the amount of compensation was not paid from public revenue. The Hon'ble Supreme Court has held that even if the funds of the State Road Transport Corporation consisted of the money provided by the State of Bombay, the fund could not be regarded as public revenue. It is held that though the source of the fund would be public revenue, once the money was invested, loaned or granted to the State Road Transport Corporation, it would change its character and become the funds or assets of the State Road Transport Corporation and cannot be regarded as public revenue. Thus the various provisions of the Act of 1997 which are referred and relied by the learned Advocates for the Corporation do not support the submission made on behalf of the Applicant/Appellant, that it is "local authority".

5. In paragraphs 17 and 18 Haq J held:

"17. Thus it has to be held that the Corporation is neither "local authority" nor "company" and therefore, it has no right to participate in the proceedings before the Collector or the reference Court. It is unexplained why the Corporation has not taken any steps to intervene in the proceedings before the reference Court and to seek permission for participating in the proceedings before the reference Court. The right of appeal under Section 54 of the Land Acquisition Act, 1894 is the statutory right and in the facts of the present case, the Corporation does not automatically get the right to file appeal and this is understood by the Corporation also and therefore, the civil applications seeking leave to file appeal are filed. The learned Advocates for the respective parties have not made any submission on the point whether the Corporation can

challenge the impugned award in appeal under Section 96 of the Code of Civil Procedure, 1908, and therefore, the point is not examined.

18. **I am conscious that the provisions of Section 54 of the Land Acquisition Act, 1894, providing for the remedy of appeal, are required to be read in such a manner that any person who is aggrieved by the award passed by the reference Court, does not remain remediless and gets an opportunity to ventilate its grievance. However, the right of appeal being a statutory right, it cannot be availed by any person who was not party in the proceedings before the reference Court.** The Corporation has sought leave to file appeal on the ground that it is the acquiring body which fact is not established by the Corporation and as already recorded earlier, the Corporation cannot be considered as the acquiring body."

(Emphasis added)

6. It makes absolutely no difference if the NHAI is in fact the acquiring body. It is even so neither a local authority nor a company as defined under the Act.

7. Reliance is placed on the observations made by KK Tated J on 17th September 2012 in another matter where the NHAI was permitted to be a co-appellant. In that order, reliance was placed on the decision of the Supreme Court in *UP Awas Evam Vikas Parishad v Gyan Devi (Dead) by LRs & Ors*³. That decision stands on a wholly different footing. The UP Awas Evam Vikas Parishad or Board was treated, or deemed, to be a local authority by virtue of the inclusion

3 (1995) 2 SCC 326.

of Section 3(i) in the Land Acquisition Act by the Uttar Pradesh amending act. Straightaway, that entitled it to participate in such proceedings. The NHAI enjoys no such position.

8. The *UP Awas Evan* decision is specifically referenced by Haq J in paragraphs 12 and 13 of *Vidarbha Corporation* thus:

"12. Thus the judgments relied upon by the learned Advocates for the Corporation will have to be considered in the light of the judgment given by the Constitution Bench of the Hon'ble Supreme Court in the case of *UP Awas Evam Vikas Parishad vs. Gyan Devi (Dead) by LRs. and others*. The Hon'ble Supreme Court, after analysis of law on the point has summed up its conclusions in penultimate subparagraph of paragraph No.18 as follows :

13. **Considering the proposition laid down in the judgment given in the case of *UP Awas Evam Vikas Parishad vs. Gyan Devi (Dead) by LRs. and others*, any body or authority which does not fall within the expression "local authority" or "company" will not have the right to participate in the proceedings before the Collector or the reference Court or to file an appeal as of right. The body or corporation will be covered by the expression "person interested" only if it is a "local authority" or "company" as per Section 3(aa) or Section 3(e) of the Land Acquisition Act, 1894."**

(Emphasis added)

9. Finally if there was any doubt about the matter and in the context of the argument raised that NHAI is "vitally interested" and "directly affected", the observations in paragraph 20 should be sufficient:

"20. In the applications filed by the Corporation seeking leave to file appeal, **it is stated that the Corporation was a necessary party in the proceedings before the Collector and the reference Court as it is the acquiring body, and beneficiary of the acquisition and consequently it has the right to challenge the award passed by the reference Court by filing appeal. The learned Advocates for the Corporation have not been able to show that the Land Acquisition Act, 1894 provides for any expression such as "acquiring body" or "beneficiary". If the Corporation is not covered by the expression "local authority" or "company", as per subsection (2) of Section 50 of the Land Acquisition Act, 1894, the Corporation will not be a necessary or proper party in the proceedings before the Collector or the reference Court and if it is so the Corporation will not have the right to file and maintain the appeal under Section 54 of the Land Acquisition Act, 1894.**

In First Appeal (Stamp) No. 20915/2015, undisputedly the State of Maharashtra has taken decision that appeal should not be filed to challenge the award passed by the reference Court. The Corporation will not have independent right to file appeal to challenge the award passed by the reference Court.

In view of the above, in my view, leave to file appeal cannot be granted to the Corporation and therefore the Civil Applications are dismissed. Consequently, the appeals are rejected. In the circumstances, the parties to bear their own costs.

As the Corporation had been filing the appeal or seeking leave to file appeal and leave was granted in several appeals and the practice had been in vogue for considerable period, it would be appropriate that this

judgment is kept in abeyance for the period of three months. This judgment shall become operative after three months."

(Emphasis added)

10. Thus, in the case before Haq J, the State Government did not appeal at all. Even then the VIDC was held to have no locus. In this case, as it happens, Mr Dabke is very much here, representing the State Government and prosecuting its appeal. I have every confidence that he will do so adequately.

11. Not only does the decision in *Vidarbha Irrigation* bind me (and is later in time than the order of 17th September 2012), but, and in any case, I am in most respectful agreement with it.

12. Section 50(2) of the Land Acquisition Act is clear that no local authority or company is entitled to demand a reference under Section 18; and proviso (a) to Section 18 is restricted to persons interested who were present or represented before the Collector when he made his award. An appeal is allowed under Section 54 from the reference court in the manner provided by the Code of Civil Procedure, 1908.

13. Thus, if the NHAI was, as it claims, 'all along' a person interested, it must explain why it did not, *qua* such 'interested person', seek to be represented before the Special Land Acquisition Officer during the acquisition proceedings. In fact, as the Affidavit in Reply points out the acquisition was made long ago: the Section 4 notification was issued on 25th June 1987 and the Special Land

Acquisition Officer made his award on 25th October 1988. The acquisition was for the 'New Bombay Project', not the NHAI. Thus, the NHAI could not have interceded before the Special Land Acquisition Officer. It could not therefore have been before the reference court; and it follows, surely, that it cannot demand as of right to file an appeal or to be impleaded in the State Government's appeal. The NHAI's application is roundly opposed by both the other parties, the claimants and the State Government. The Civil Application also does not have any details at all as to when and how, or under what order, the acquisition was handed over to the NHAI for widening NH-4B. At the relevant time, the highway was under the management of the Public Works Department of the State Government. It is only 'now' — NHAI's words — that NHAI is supposedly in full control and management of NH-4B. This level of vagueness is unacceptable in such an application.

14. This case is, therefore, on all fours with the *Vidarbha Irrigation* case before Haq J.

15. The Civil Application is dismissed. No costs.

(G. S. PATEL, J)