NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3053 of 2004

Reserved on 26.06.2018

Delivered on 11.07.2018

National Thermal Power Corporation Limited, Sipat, through its General Manager, Post Office Sipat, District Bilaspur (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mantralaya, D.K.S. Bhawan, Raipur (C.G.).
2. The Collector, Bilaspur, District Bilaspur (C.G.).
3. Sub Divisional Officer, Revenue, Bilaspur, District Bilaspur (C.G.).
4. Dwarikesh Pandey S/o Shri Awadh Bihari Pandey, R/o Masanganj, Bilaspur, District Bilaspur (C.G.).
5. Sushil Kumar Agrawal, R/o Saket Apartment, J-5, Near Agrasen Chowk, Bilaspur (C.G.). **----Respondents**

For Petitioner : Shri B. D. Guru, Advocate.
For Respondent/State : Shri Shashank Thakur, Govt. Advocate.
For Respondent no.4 : Shri Anup Majumdar, Advocate.
For Respondent no.5 : Shri M. L. Pastore, Advocate

Writ Petition No. 615 of 2005

Sushil Kumar Agrawal S/o Shri Devraj Agrawal, aged about 35 years, R/o Saket Apartment, J-5, near Agrasen Chowk, Bilaspur (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, through Collector, Bilaspur, District Bilaspur (C.G.).
2. Sub Divisional Officer & Land Acquisition Officer, Bilaspur, District Bilaspur (C.G.).
3. General Manager, N.T.P.C. Seepat, District Bilaspur (C.G.).

----Respondents

For Petitioner	:	Shri M. L. Pastore, Advocate.
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate.
For Respondent no.3	:	Shri B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy

C A V O R D E R

1. These are the two Writ Petitions which arise out of the same proceedings drawn by the Sub Divisional Officer (Revenue), District Bilaspur and the Collector/Additional Collector, Bilaspur thereafter.

2. Since, the facts of the two cases and the proceedings drawn in either of the cases being same, this Court proceeds to decide the two Writ Petitions by this common judgment.

3. WP No.3053/2004 is a petition which has been filed by the management of NTPC, Sipat, Bilaspur challenging the order Annexure - P/10 dated 15/10/2001 and Annexure - P/11 dated 06/03/2002 so also challenging Annexures - P/1 and P/2 dated 17/10/2001 and 01/04/2002 respectively.

4. Annexures - P/10 and P/11 are the orders passed by the Additional Collector holding that the management of NTPC is entitled to compensate the two private respondents namely Dwarkesh Pandey and Sushil Kumar Agrawal for the loss of business that they incurred, as the land in which they were operating their business had to be closed by virtue of the said land being acquired by NTPC.

5. Annexures - P/1 and P/2 are the orders passed by the Sub Divisional Officer (Revenue) demanding compensation from NTPC as assessed by the Additional Collector vide Annexures P/10 and P/11.

6. WP No.615/2005 is a Writ Petition filed by one of the beneficiaries from the order of Additional Collector namely Sushil Kumar Agrawal seeking prayer for directing the respondents to release the payment as assessed by the Additional Collector at the earliest.

7. We proceed further to first decide the petition filed by NTPC i.e. WP No. 3053/2004, the decision of which would decide the fate of the petition filed by Sushil Kumar Agrawal.

8. The brief facts relevant for adjudication of the two Writ Petitions is that, the establishment of NTPC decided to put up a Thermal Power Plant at village Sipat near Bilaspur. For the purpose of establishment of the said Thermal Power Plant, a request was made by the petitioner's company to the State of Chhattisgarh for acquiring land. Accepting the said request, the State Government proceeded to acquire the land required by NTPC in village Sipat and in the course, land belonging to the private holders were also acquired and the NTPC paid the cost of the acquisition including the land value and distributed the same to the land holders whose land was acquired.

9. In addition, a large portion of Government Revenue Land was also allotted to the NTPC on payment of premium.

10. The dispute in the present petition revolves around the Government Revenue Land situated at Khasra No. 954 area measuring 9.4 acres.

11. It is said that the two private respondents Dwarkesh Pandey and Sushil Kumar Agrawal were in the past granted quarry mining lease on the said Government Revenue Land. It is said that the two private respondents have been operating the said business on the said land when the acquisition proceedings were proposed to be initiated and thereafter the lease which was in operation in favour of private respondents were either not renewed or had been cancelled and the land had been allotted to the management of NTPC.

12. Subsequent to the said Government Land being allotted to the NTPC, the private respondents moved an application before the Collector seeking compensation for the business loss which they have incurred who were holders of quarry mining lease.

13. Subsequently, State Government initiated a proceeding on the request of the private respondents and reached to the conclusion that the private respondents have to be compensated for the loss which they have incurred in the course of winding up of their business of mining at village Sipat and also for the shifting of their mining machinery and force from Sipat to a different location. Finally it was held that the private respondents Dwarkesh Pandey would be entitled for an amount of Rs.71,000/- and Sushil Kumar Agrawal would be entitled for an amount of Rs.10,39,120/-.

14. Lateron, the assessment of compensation so far as Dwarkesh Pandey is concerned stood enhanced from Rs.71,000/- to Rs.11,45,818/- and so far as amount payable to Sushil Kumar Agrawal got reduced and confined to Rs.9,68,120/-. It is these assessments and demand notice made by the Revenue Authorities which is under challenge in these two Writ Petitions.

15. According to the management of NTPC, the impugned proceedings by the Additional Collector and the assessment made is totally misconceived and bad in law without the authority and competence. It was also alleged that the said proceedings were in violation to the principles of natural justice and that before the assessment of compensation in favour of the private respondents were passed, the NTPC as such was never noticed or granted an opportunity of hearing and for this reason, the proceedings and the assessment so made by the Additional Collector gets vitiated and deserve to be set aside.

16. According to the counsel for the petitioner, the Additional Collector failed to appreciate the fact that it is ultimately the Government Land which has been allotted to the NTPC and that since it was a Government Land, the petitioners have paid premium to the State for the use of said land and therefore the NTPC as such would not be responsible for payment of any further compensation to the private respondents whose private land have not been acquired by NTPC.

17. It was also the contention of the counsel for NTPC that at not point of time was the acquisition or the allotment made to NTPC on the condition that they shall have to compensate the users of the Government Land.

18. So far as the lease which was in the name of Dwarkesh Pandey is concerned, it was the contention of NTPC that the said mining lease of Shri Dwarkesh Pandey had already expired and therefore he was no longer using the said property and therefore he was also not entitled for any compensation much less the NTPC would not be responsible for compensating somebody whose lease was not in existence when the land was allotted to NTPC.

19. It was also the contention of NTPC that, there is no such procedure, rules or law which requires the NTPC to make the payment as compensation for a third party in spite of the property against which compensation is claimed being a Government Land.

20. According to the management of NTPC, the proceeding of payment of compensation is also bad in law for the reason that, unless the concerned land is acquired under the provision of Land Acquisition Act, the company or the person for whom the land was being acquired is not supposed to make any compensation.

21. It was lastly contended that, the assessment also is bad in law for the reason that the management of NTPC had not been taken into confidence or granted an opportunity of hearing while assessing the compensation.

22. The contention of NTPC was that since the law of payment of compensation has been saddled upon NTPC, the NTPC ought to had been a necessary party and a proceeding drawn without the NTPC being made a party is bad in law and the entire proceedings stands vitiated on this ground alone. For all these reasons, NTPC prays for setting aside of the impugned orders and further prays that it be held that NTPC is not liable to pay any compensation to the private respondents.

23. Per contra, State counsel opposing the petitions submits that the contentions and submissions made by the counsel for the petitioner may not be acceptable for the simple reason that the entire proceedings drawn including the allotment of land to NTPC were all at their behest and that it is only when NTPC had sought for allotment of the said land, the respondent State initiated steps for handing over the same to NTPC. By virtue of allotment of land to NTPC, the private respondents Dwarikesh Pandey and Sushil Kumar Agrawal who were having mining lease over the said property had to be displaced from that area, in the course, they had to suffer huge loss particularly the expenses incurred in winding up of the mining activity in that location and for shifting their man and machinery from the said place to a separate location. They also suffered business loss because of the non renewal of mining lease or the cancellation of mining lease.

24. So far as the payment of compensation is concerned, it is the contention of the State counsel as well as the private respondents that the authorities concerned had intimated the management of NTPC in respect of the requirement of payment of compensation to the displaced private respondents who were earlier having mining lease over the said piece of land. It is further contended that since it was a claim for compensation of the private respondents from the State Government, NTPC may not be a necessary party. Further contention of the State counsel is that in spite of not being a necessary party, NTPC was in fact issued with a notice and was intimated of the proceedings that were drawn by the authorities of the State Govt while determining the compensation to be paid to the private respondents. According to the State counsel, initially when the plant was being set up and acquisition proceedings were being drawn, the land over which the mining was given to the two private respondents was not acquired nor was it allotted to NTPC. State counsel drew the attention of the Court to the proceedings that were drawn by the SDO while deciding the compensation payable and pointed out the order sheets wherein it was ordered that the notices were sent to the management NTPC in respect of the proceedings so drawn by the SDO which by itself would establish the fact that the petitioner was in fact noticed. According to the State counsel, in spite of notice if the management does not want to contest the case by putting their appearance, the authorities cannot be held to have conducting the proceedings behind their back.

25. Similar arguments were also raised by the counsel appearing for the two private respondents who also drew the attention to the proceedings drawn by the SDO and submitted that it is not a case where NTPC was not a party and that they were not issued with a notice but in spite of notice, they did not participate in the proceedings and thereby left it for the State Authority to decide the case. Thus, the said ground of the counsel for NTPC according to the respondents is not acceptable. The private respondents further contended that admittedly they had a mining lease. They were carrying business on the said plot and which was not renewed further only on account of the proceedings drawn by the State for allotment of land to NTPC. That they had already made huge investments in the business and were operating the business with the mining lease since long and the original lease which had been issued was getting renewed periodically from time to time and this was in fact the source of livelihood of the private respondents, therefore the demand for compensation is justified and NTPC as such cannot now turn around and question any compensation if it has been ordered to be paid to the private respondents.

26. Having heard the contentions put forth on either side and on perusal of the record when we see the documents enclosed with the writ petitions along with annexures, it reflects that the State Govt. had initially allotted a large chunk of land at village Sipat, Tahsil Masturi for erection and construction of thermal power plant in March, 2000. While the allotment was being made, the State Govt. did not allot 9.4 acres of land in Khasra No. 954 in the same village as the said land was made available for mining purpose and mining lease had already been executed in favour of private respondents. However, the management of NTPC subsequently as is evident from Annexure P-4 dated 01.08.2001 made a request to the State Government for allotting the said land. The State Government thereafter got a report prepared from the Additional Tahsildar, Sipat who in turn prepared a report on 19.03.2002 holding that there is no impediment in allotting the said land to NTPC. Much before these letters being issued on 20.02.2000, a letter was in fact sent by the SDO to the General Manager, NTPC Sipat calling upon a stand to be taken by the NTPC so far as the compensation which was to be paid to the two private respondents. It was also intimated to NTPC that if the said land which they wanted to be allotted is allotted to them, the private respondents would incur loss. The correspondence dated 10.04.2000 Annexure P-4/5 made by NTPC to SDM seeking for allotment of the said land would show that initially when NTPC had sought for allocation of the said land, the private respondents were having mining lease in their favour. Therefore NTPC had requested the Govt. for cancellation of the mining lease and thereafter allotting the same to the peititoner. Another letter which needs to be looked into is the letter made by NTPC by the then General Manager on 27.01.2001 Annexure P-4/7 which clearly shows that the management of NTPC had in fact requested the State Government to expedite the application for allotment of land and also had accepted payment of compensation to these lease holders for which they were legally entitled for. Further from the proceedings which were drawn by the SDO it would reveal that there are more than one occasion where it reflects that NTPC was noticed during the course of proceedings but for some reasons they did not appear before the SDO. Another aspect which needs to be looked into is that NTPC had first requested for allotment of land and the land originally stood in the name of Government. The Government in turn had given it for mining purpose by way of lease to the private respondents. Now by allotting the land to NTPC these private respondents were adversely getting affected so they demanded compensation and for which proceedings were drawn. Thus, it was a pure inter se dispute between the land owner i.e. the State Govt. and the person using that land by way of mining lease i.e. the private respondents. Though NTPC had been noticed and the entire proceedings itself had been drawn at their behest, no prejudice as such has been caused if they had not participated for the proceedings before the SDO. Moreover, Annexure R-4/7 dated 27.01.2001 shows the acceptance on the part of NTPC in providing compensation to the persons who were having the mining lease. Moreover, the compensation as such has been calculated taking into consideration different aspects of the business which the private respondents were undertaking and the loss that they have suffered. Undisputedly, the private respondents have been using the said land for mining purpose since long. Further had it not been allotted to NTPC, the mining lease in favour of the private respondents would have got renewed as was being done in past. Another aspect which cannot be lost sight is that the said land was initially not allotted to NTPC only on account of this land being used for mining purpose. However, subsequently, at the request of NTPC knowing fully well that it was being used for mining purpose by private respondents the mining lease was either discontinued or was cancelled.

27. Given the aforesaid facts and circumstances of the case, this Court does not find any strong grounds made out by NTPC calling for an interference with the impugned orders passed by the Additional Collector and the SDO vide Annexures P-1, P-2, P10 & P-11. The writ petition filed by NTPC i.e. WP No. 3053/2004 thus being devoid of merit, deserves to be and is accordingly dismissed.

28. As a consequence of dismissal of the writ petition preferred by NTPC, the writ petition preferred by Sushil Kumar Agrawal i.e. WP No. 615/05 gets allowed for the reason that the said writ petition has been filed only seeking for execution of the order passed by the Additional Collector and the SDO quantifying the compensation for the loss suffered in the process of cancellation of mining lease and the intimation for payment of compensation made by the SDO to NTPC.

29. Thus, Writ Petition No.615/05 being allowed it is directed that respondent no.3 NTPC shall take necessary steps ensuring payment of compensation at the earliest. Since there is an order in favour of the private respondents since 2002 on wards and these writ petitions are being disposed of in the year 2018 and for all these periods the private respondents have been deprived of the use of amount of compensation, this Court is of the opinion that they would be adequately compensated if they are awarded interest on the said amount. Accordingly, it is ordered that NTPC while making payment to the private respondents or depositing the same before the State authorities shall also pay interest on the said amount @ 6% per annum from the date of issuance of Annexures P-1 & P-2 till the date of actual payment.

30. Thus, WP No. 3053/04 stands rejected and WP No. 615/05 stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit/bhola