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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 707 of 2018

National Thermal Power Corporation Limited Sipat, Through Its General Manager, Post Office Sipat, District- Bilaspur, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Revenue Department Mahanadi Mantralaya New Raipur Police Station Rakhi, District- Raipur, Chhattisgrh.
2. The Collector Bilaspur, District- Bilaspur, Chhatisgrah.
3. Sub Divisional Officer (Revenue) Bilaspur, District- Bilaspur, Chhattisgarh.
4. Dwarika Pandey S/o Shri Awadh Bihari Pandey R/o Masanganj, Bilaspur, District- Bilaspur, Chhattisgarh.
5. Sushil Kumar Agrawal R/o Saket Apartment, J-5, Near Agrasen Chowk, Bilaspur, Chhattisgarh.

---- Respondents

And

Writ Appeal No. 722 of 2018

National Thermal Power Corporation Limited Sipat, Through Its General Manager, Post Office Sipat, District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through Collector, Bilaspur, Dist. Bilaspur Chhattisgarh.
2. Sub Divisional Officer And Land Acquisition Officer, Bilaspur, District Bilaspur Chhattisgarh.
3. Sushil Kumar Agrawal, S/o Shri Devraj Agrawal, R/o Saket Apartment, J-5 Near Agrasen Chowk, Bilaspur Chhattisgarh.

---- Respondents

For Appellant/NTPC	: Dr. N.K. Shukla, Senior Advocate with Shri B.D. Guru, Advocate.
For Respondent/State	: Shri Prasun Bhaduri, Government Advocate.
For Private Respondent	: Shri Anup Majumdar, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

11/10/2018

Per Ajay Kumar Tripathi, Chief Justice

1. Heard learned counsel for the parties.

2. The order dated 11.07.2018 passed by the writ Court giving a direction upon the Appellant-National Thermal Power Corporation Limited ('NTPC') to pay the compensation to the two private Respondents, for loss of their business due to handing over the possession of the land, which they were holding by virtue of a valid lease and payment of interest @ 6% per annum, is the reason for the NTPC to file the two appeals.

3. Dr. N.K. Shukla, Senior counsel representing the NTPC submits that so far as the case of Dwarikesh Pandey is concerned, his lease had already expired. He had no interest left of legal kind and therefore, in his case, no decision or direction ought to have been given for payment of compensation for loss of business. It is his case that the case of Dwarikesh Pandey is distinguishable from Sushil Kumar Agrawal.

4. The other argument made on behalf of the learned Senior counsel is that they were not really noticed and given an opportunity to contests the claim made on behalf of two lessees whose land was handed over by the State Government to the NTPC. Even the quantification or enhancement of significant kind by revenue authorities is irrational and not based on any reasonable basis or inputs.

5. The obligation to pay compensation cannot be saddled on to the NTPC because the lease anyway was granted by the State Government and it was their decision may be at the request of NTPC to handover possession, which was required for setting up of the Power Plant at Seepat.

6. Both from the records as well as discussions made by the learned Single Judge, it is evident that NTPC was noticed by the revenue authorities when claim was made by the two private Respondents for compensation, due to loss of business and for closure of the Mines including loss which they would suffer because of the investments made to work the lease. The NTPC itself chose not to contest even though they initially did choose to appear before the revenue authorities.

7. The other significant aspect which had been noted by the learned Single Judge is that it was the insistence of the NTPC to get possession of the land on which two private Respondents were working their lease that the State Government decided to allot the said land also to NTPC, but then, the perils of such allotment including the implication thereof was clearly made known to them through communications from the office of Collector that the land in question is not free. The two private Respondents had been alloted the said land under a valid lease and that ousting them because of the need of the NTPC will cause financial losses to them and compensation may be required to be paid by NTPC.

8. The Court does not find any fault with the findings of fact and the conclusion which has been arrived at by the learned Single Judge that an obligation to pay compensation in terms of the quantification arrived at by the revenue authorities is erroneous in any manner and therefore requires interference. The evidence are available by way of communications between NTPC and the State authorities with regard to the status of the land amounting to 9.4 acres and the fact that if the said land is alloted to them, there will be implications for the two lessees. It is because of the insistence of the NTPC that the State Government decided to succumb and predetermine the lease at least in the case of Sushil Kumar Agrawal and not renew the lease in relation to Dwarikesh Pandey. A long running business of the two private Respondents was forced to be closed and the loss caused due to not only closure of the business, but even relocation or making new beginning cannot be questioned. Therefore, if compensation was ordered to be paid upon the NTPC in the circumstances noted above then the NTPC cannot extricate itself from that responsibility, since, despite knowing all the facts, they still insisted on having possession of 9.4 acres of land, as according to them in absence thereof the township which was to come up alongwith the Power Plant would not have been possible.

9. The challenge which has been thrown by the NTPC in the two appeals that initially a token compensation was awarded of Rs.70,000/- odds in one case and sudden escalation and revision thereof Rs.11 lacs does not seem to be justified is also a misplaced argument to make. Private Respondents had brought on record the deliberations and the order of quantification which had been made by revenue authorities. Based on the inputs which went into the said calculation is also available on record. When such deliberations and decisions were brought on record, the NTPC decided to challenge the same by way of an amendment to the two writ applications, which was also moved by them.

10. We find difficulty to accept this line of argument as well, because NTPC itself chose not to participate in the adjudication and deliberation and therefore, they are precluded from the assailing the same now at a later stage. They cannot be rewarded for a strategy which they themselves adopted of non-cooperation by non-participation.

11. Further, we also see that the basis for working out the compensation for the loss of business has been duly provided in the deliberation and *prima facie,* it does not seem to be irrational or arbitrary, which is required to be interfered with.

12. We therefore hold that the decision and the order of the learned Single Judge does not suffer from any vice, therefore, the appeals have no merit and they are dismissed.

13. The obligation of NTPC to pay to the private Respondents in terms of the quantification as well as the direction to pay interest in terms of the order of the learned Single Judge must be honoured within a period of 3 months from today, keeping in mind that the two private Respondents have lost their business and have not been compensated for almost 18 years now.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Yogesh