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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 19th February, 2018

+ CM(M) 895/2015 and CM APPL.21036/2015, 21039/2015

TATA COMMUNICATIONS LIMITED Petitioner

Through: Mr. Dhruv Mehta, Senior Advocate
with Mr. Ajit Warrier, Mr. Aditya
Nayyar & Mr. Varun Byreddy,
Advocates

versus

UNION OF INDIA THR. THE LAND ACQUISITION
COLLECTOR & ANR. Respondents

Through: Mr. B.L. Wali, Advocate with Ms.
Deepti Gupta, Advocate for R-2.
Mr. Yeeshu Jain Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand was filed to assail the order dated 20.05.2015 of the Additional District Judge (ADJ) passed on the file of land acquisition case (LAC) No.14/2014 to the extent thereby two issues (issue Nos.7 and 8) were framed having a bearing on the question of title of the petitioner in the land which is subject-matter of the acquisition proceedings leading to the award dated 30.12.2013 being passed by the first respondent and the reference dated 15.04.2014 made in terms of Section 18 of Land Acquisition Act, 1894 (since repealed).

2. The award bearing No.05/2013-14 dated 30.12.2013 was passed

by the first respondent in connection with action for acquisition of a parcel of land admeasuring 10489.18 sq. mts. situate at Greater Kailash Part-I, alongside outer ring road respecting which the petitioner claims right, title and interest. The acquisition proceedings which culminated in the said award being passed are subject-matter of challenge by writ petition (civil) No.2130 of 2014. On 24.04.2014, the division bench hearing the said writ petition had allowed the reference petition to be processed in accordance with law without prejudice to the rights and contentions urged by the parties in the writ proceedings.

3. It is stated that the second respondent, Delhi Metro Rail Corporation (DMRC), is the intended beneficiary of the acquisition proceedings. DMRC had moved an application on 06.01.2015 seeking impleadment of the Department of Telecommunications in the Ministry of Communication and Information Technology of the Government of India (DoT) as a co-respondent on the basis of averments that the ownership of the parcel of land which is the subject-matter of acquisition proceedings did not vest in the petitioner on the date of acquisition. It is the contention of the petitioner that the DoT has gone on record in the writ court to state that the land in question stood transferred in the name of Videsh Sanchar Nigam Limited (VSNL) which had statedly later been converted into a private limited company on divestment of government equity to the extent of 25%, its name having since been changed to that of the petitioner.

4. On the basis of pleadings brought before the land acquisition

court, it settled issues by order dated 20.05.2015, the seventh and eighth issues to which exception is being taken reading thus:-

“7. Whether the petitioner is not having title of the property? OPR

8. Whether the respondent being beneficiary, can challenge the title of the petition? OPP.”

5. There is seemingly a need to reconsider the language employed in the eighth issue, as indeed the onus in its respect. The word “*petition*” should read “*petitioner*” and the burden of proof that of party raising the challenge, this subject, of course, to what follows hereinafter.

6. Be that as it may, it is the argument of the petitioner that in the proceeding arising out of reference under Section 18 of Land Acquisition Act, 1894, the land acquisition court cannot go into the question of “*title*”. Reliance in this context is placed on the rulings of the Supreme Court in *Pramatha Nath Mullick Bahadur vs. Secretary of State*, AIR 1930 PC 64; *Sharda Devi vs. State of Bihar & Anr.*, (2003) 3 SCC 128; *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. vs. Allahabad Vikas Pradhikaran & Anr.*, (2003) 5 SCC 561; *Ahad Brothers vs. State of M.P. & Anr.*, (2005) 1 SCC 545; and of a learned single judge of Punjab and Haryana High Court in *Mangat Rai (deceased) through his LR vs. Land Acquisition Collector, Punjab State Electricity Board, Patiala & Ors.* RFA No.1856/1991, dated 20.07.2012.

7. Having heard the learned counsel and having gone through the

record, this court finds that the issues raised by the petition at hand were not even pressed before the land acquisition court at the hearing leading to settlement of issues or even thereafter. Thus, this court does not have the advantage of the opinion of the trial court on the matter being agitated by the petition at hand.

8. DMRC has submitted a counter affidavit in answer to the petitioner at hand, *inter alia*, reiterating its position, as taken before the land acquisition court, that the petitioner is “*not the owner of the entire land*” and further that it has not placed on record the relevant documents to substantiate its claim in such regard.

9. The stage of settlement of issues and determination of the suit on issues of law or on issues which are agreed upon is an important stage in the proceedings arising out of a civil suit. The provisions contained in Order XIV of the Code of Civil Procedure, 1908 (CPC) guide the civil court in this exercise. Rule 1(5) of Order XIV CPC enjoins upon the court to ascertain “*upon what material propositions of fact or of law the parties are at variance*”, this after reading of the plaint and the written statement and after examination of the parties under Order X Rule 2 and further “*after hearing the parties or their pleaders*”. It is thereafter that the court is expected to “*proceed to frame and record the issues on which the right decision of the case appears to depend*”. The expression “*material propositions*”, as appearing in Rule 1 (5), is defined by Rule 1(2) as “*those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence*”.

Issues are generally of two kinds – issues of facts or issues of law. It is trite that issues arise “*when a material proposition of fact or law is affirmed by one party and denied by the other*”, as declared in Rule 1(1) of Order XIV CPC.

10. Though the impugned order dated 20.05.2015 does not expressly so state, given the fact that the parties including the petitioner herein were duly represented by their respective counsel, it has to be assumed that they were heard by the land acquisition court before issues were framed. This is inherent also in the observations recorded immediately after the nine issues were set out to the effect that “*no other issue pressed or claimed or arises from the pleadings of the parties.*”

11. The procedural law recognizes errors being committed. This is why, in the particular context of the question of settlement of issues, Rule 5(2) of Order XIV enables the civil court to “*strike out any issues that appear to it to be wrongly framed or introduced*”, at any time before passing a decree.

12. Going by the proceedings recorded on 20.05.2015 by the ADJ and the averments in the petition at hand, it is clear that the arguments vis-à-vis the seventh and eighth issues, as noted above, were not urged before the trial court either at the time of settlement of issues or at any time thereafter. No application for striking out of the said issues on the ground of they having been “*wrongly framed or introduced*” was moved. This is not a correct approach to the subject.

13. It appears from the pleadings on the record of this petition and the documents filed therewith that the petitioner has come up with selective material. In this view, it would not be proper for this court to delve into the arguments raised without the benefit of the views of the land acquisition court. It was desirable that the issues were first urged before the trial Judge, his attention being drawn to the relevancy or otherwise of questions that are raised and expected to be addressed as “*material propositions*”, with reference to the scope of the proceedings arising out of a reference under Section 18 of the Land Acquisition Act, 1894.

14. The petitioner by rushing to this court appears to have by-passed the jurisdiction of the ADJ in considering the arguments germane to the necessity of framing the two above-noted issues which cannot be permitted.

15. Thus, the petition at hand is disposed of with observations that the petitioner may, if so advised, move an appropriate application under Order XIV Rule 5 CPC for modification or striking out the afore-mentioned two issues, in such application it having the liberty to raise the contentions urged before this court in the proceedings at hand.

16. The pending applications also stand disposed of.

R.K.GAUBA, J.

FEBRUARY 19, 2018/vk