IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.09.2019

PRONOUNCED ON : 17.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.603 of 2011

The Chairman cum Managing Director,
Neyveli Lignite Corporation Limited,
Neyveli - 1. ... Appellant/3rd Respondent

Vs.

1. Palanisamy ...1st Respondent/Petitioner

2. The Special Tahsildar (Land Acquisition),
Jayamkondam Lignite Power Project,
Jayamkondam.

3. The Executive Director,
Tamil Nadu Industrial Development Corporation,
Egmore,
Chennai - 600 008. ...2nd and 3rd Respondents
/1st and 2nd Respondnets

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code r/w section 54 of Land Acquisition Act, 1894 as against the judgment and decree passed in L.A.O.P. No.1757 of 2008 on the file of Special Court No.II, Jayamkondam dated 30.09.2011.

For Appellant : Mr.N.Nithyanandam

For R1 : No appearance/set exparte
vide order dated 05.09.2019

For R2 : J.Balagopal,
Special Government Pleader (CS)

For R3 : Mr.M.Vijayan,
For M/s. King & Partridge

JUDGMENT

Aggrieved over the judgment and decree dated 30.09.2011, passed in L.A.O.P. No.1757 of 2008, on the file of the Special Court No.II, Jayamkondam, the third respondent has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Shorn of unnecessary details, it is found that the Government of Tamil Nadu by Gazette notification No.446, dated 04.08.98, issued a notification for the acquisition of the subject lands along with the other lands for the lignite mining cum power project and a notification under Section 4(1) of the Act was issued on 22.09.98 with reference to the same. Following the notifications, after the observation of the proceedings contemplated under the Act, an award has been passed on 23.11.2000 fixing the compensation to be paid to the land owners and it is found that the land owners including the claimant received the compensation under protest on 06.09.2001. Following the same, reference has been made to the competent Court and the same had been taken on file in L.A.O.P. No.1757 of 2008.

4. In support of the claimant's case, no oral and documentary evidence has been adduced. On behalf of the first respondent, RW1 was examined and Exs.R1 to R6 were marked. On behalf of the third respondent, RW2 was examined and Exs.R7 to 17 were marked.

5. On a consideration of the oral and documentary evidence placed on record, the referral Court had fixed the compensation at the rate of 600 per cent and also fixed the value of the trees at Rs.1000/- and accordingly, directed to pay the compensation on the abovesaid lines in favour of the claimant from the date of 4(1) notification with 30% solatium, 12% additional amount, 9% interest for one year and subsequent interest at 15% till the payment is made and accordingly disposed of the reference without costs. Furthermore, the referral Court also directed the third respondent, namely, the appellant herein who has to pay the enhanced compensation as determined by it within three months. Impugning the abovesaid determination of the above Court, the present appeal has been preferred by the third respondent/appellant.

6. As could be seen from the materials available on record, it is found that the third respondent had mainly contested the claim of reference on three grounds contending that (i) inasmuch as the claimant has not placed any material to disturb the award fixed by the land acquisition officer, accordingly put forth the case that the referral Court should confirm the award passed by the land acquisition officer and dispose of the reference. (ii) The reference is barred by limitation and (iii) contended that inasmuch as the third respondent/appellant was not a party to the proceedings under section 4 or section 6 or section 11 or

section 12 of the award proceedings and even not a party at the time of reference under section 18 of the Act and further, as there is no agreement between the appellant and the Government for the payment of compensation or the enhanced compensation on the part of the appellant, accordingly, put forth the case that the third respondent/appellant is not liable to pay the compensation to the claimant.

7. On all the abovesaid three grounds raised by the third respondent/appellant, the referral Court had not concurred with the contentions put forth by the appellant and accordingly, as above pointed out, disposed of the reference fixing the enhanced compensation and further held that it is only the appellant who is liable to deposit the enhanced compensation.

8. The counsel for the appellant put forth the arguments that he is challenging the award of the referral Court mainly on the point that the referral Court has erred in directing the appellant to pay the enhanced compensation and hence, according to him, the abovesaid determination of the referral Court is liable to be set aside.

9. Therefore, the following points arise for determination in this appeal:

1. Whether the determination of the referral Court that the third respondent/appellant is liable to pay the enhanced compensation is erroneous and liable to be set aside?

2. To what relief the third respondent/appellant is entitled to?

Point No.1:

10. It is mainly put forth by the appellant counsel that inasmuch as the appellant is not a party either at the time of Section 4 (1) notification or Section 6 (1) notification or either a party to the award proceedings and also not a party to the referrals, contended that the appellant is not liable to pay any compensation or the enhanced compensation and further contended that inasmuch as the appellant had been impleaded as a party midway, according to him, the appellant cannot be made liable to pay the compensation much less the enhanced compensation as determined by the referral Court. In this connection, he relied upon the decision of the Division Bench of this Court dated 27.08.2015 passed in A.S.No.233/2015 (Batch Cases) (The Chairman, Neyveli Lignite Corporation Limited, Neyveli - 1 Vs. 1. P.Thangarasu, 2. The Special Tahsildar (Land Acquisition), Jayamkondam Lignite Power Project, Jayamkondam 3. The Executive Director, Tamil Nadu Industrial Development Corporation, Egmore, Chennai - 600 008) and contended that in

similar matters, the same point has been urged before the Division Bench by the appellant and the Division Bench has held that the appellant is not liable to pay the compensation determined by the referral Court and accordingly disposed of the abovesaid batch appeals in favour of the appellant and accordingly, prayed this Court to follow the decision of the Division Bench and allow the appeal preferred by the appellant.

11. On a perusal of the judgment rendered by the Division Bench in the abovesaid batch appeals relied upon by the appellant's counsel, it is found that the same point which has been put forth by the appellant's counsel, had been urged before the Division Bench also and the Division Bench has also taken into consideration the relevant G.O.'s namely, the G.O.MS.No.40 dated 28.03.2005 and G.O.MS.No.62 dated 06.07.2006 and accordingly held that the appellant is not liable to pay the compensation or the enhanced compensation and held that the decision of the referral Court holding that the appellant liable to pay the compensation is liable to be set aside. The relevant portion of the judgment of the Division Bench is referred below for a proper appreciation of the contentions raised before the Division Bench and the determination of the Division Bench with reference to the same.

> 9.After a provisional offer was made by NLC on 18.12.2003, TIDCO requested the Government to issue orders transferring JLPP (Jayamkondam Lignite Power Corporation Project) including the lands acquired for the purpose of implementing it through a joint venture of Tamil Nadu Electricity Board and NLC. Therefore, the Government issued G.O.Ms.No.40 Industries (MID-1) Department dated 28.03.2005, according administrative approval for implementation of Jayamkondam Lignite Power Corporation Project by a joint venture between Tamil Nadu Electricity Board and NLC.
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> 10.In a series of meetings held, NLC expressed willingness to develop the project on their own and to offer 75% of the power generated to Tamil Nadu, subject to certain modifications. The Government accepted the same and issued G.O.Ms.No.62 Energy (B2) Department dated 06.07.2006, according administrative sanction for -
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> 1.the development of the project by NLC independently;

2.allowing Tamil Nadu Electricity Board to play the role of facilitator;

3.sharing the power generated as per the current CEA Guidelines; and

4.allowing NLC to develop the project independently without any investment from the Government of Tamil Nadu or Tamil Nadu Electricity Board.

It was also indicated that the lands acquired by TIDCO and owned by Tamil Nadu Electricity Board would be handed over to NLC, after realising the expenditure incurred.

11.Para 4 "(IV)" of G.O.Ms. No.62 dated 06.07.2006 requires to be extracted. Hence it is extracted as follows :

"4. (iv). M/s.Neyveli Lignite Corporation will develop the project independently without any investment from the Government of Tamil Nadu/Tamil Nadu Electricity Board. The land already acquired by TIDCO (now owned by TNEB) to be handed over to Neyveli Lignite Corporation after realizing the expenditure incurred."

12.But, there were lot of difficulties, which the parties could not sort out between themselves. Therefore, what became a non-starter at the hands of TIDCO and Reliance Industries Limited, continued to be so even after NLC was roped in. Therefore, eventually, NLC wrote a letter to the Government of Tamil Nadu on 06.03.2012, requesting the Government to annul G.O.Ms.No.62 Energy (B2) Department dated 06.07.2006. This letter has not evoked any response from the Government so far.

13.In the meantime, the Special Tahsildar (Land Acquisition) proceeded to pass several awards, fixing the compensation at a particular rate. Aggrieved by the quantum of compensation fixed by the Tahsildar, land owners sought references. Hundreds of references came to be made before the Sub Court, Jayamkondam, which actually became a Special Court for these cases.

14.Interestingly, in the references made to the Tribunal, NLC was not made a party in the first instance. But half way through the enquiry into the references under Section 18, NLC came to be impleaded as a party in all cases. As against their sudden impleadment, NLC came up with a revision petition before this Court. But the revision petition in one case in C.R.P. No.3149 of 2009 was dismissed by this Court by order dated 20.10.2009.

15.Thereafter, what happened was, the Tribunal passed orders in batches and batches of cases, enhancing the compensation payable. The orders passed by the Tribunal fall under three categories viz.,

1.those cases in which the entire liability was fastened only upon NLC;

2.those cases in which the liability was fastened jointly and severally upon NLC and TIDCO; and

3.those cases in which the liability was fastened only upon TIDCO.

16.Adding more complication to the already complicated project, in the references made in many cases in the subsequent years, the claimants gave up NLC as a party to the proceedings. This has resulted in either NLC alone challenging the awards passed by the Tribunal (1)where they have been made jointly and severally liable along with TIDCO or (2)where they have been made solely responsible for payment of claim. TIDCO is said to have filed appeals against those cases where they are made jointly and severally liable or where they are made solely liable.

17.In the batch of cases on hand, NLC, who is the appellant, is aggrieved by the fact that they have been made jointly and severally liable to pay the compensation along with TIDCO. Though the grounds of appeal filed by the appellant disclose that their challenge to the award of the Tribunal are two fold viz., both on the very liability as well as on the quantum of compensation, we are of the considered view that the latter is only a consequence of the former. The second question relating to the quantum of compensation would arise for consideration only if we hold the first question relating to liability against the appellant. Therefore, we shall first take up the question as to whether the appellant is liable at all, either jointly and severally or individually to pay the quantum of compensation as fixed either by Land Acquisition Officer or as fixed by the Tribunal.

18.As rightly contended by the learned counsel for the appellant, the lands were not acquired for the benefit of the appellant at the beginning. The Notifications under Section 4(1) of the Act, whatsoever, were not issued, showing the appellant as the requisitioning body. The original Notifications were issued only for the purpose of implementing the power project at the behest of TIDCO. As a matter of fact, TIDCO associated itself with a company by name McNally Bharath Engineering Company Limited and four other German companies as equity partners. This partnership gave birth to a new company called Jayamkondam Lignite Power Corporation Limited. If at all, any one could be called the requisitioning body, it could either be TIDCO or at least Jayamkondam Lignite Power Corporation Limited. NLC was nowhere in the picture from the year 1993 till the year 2004. NLC came into picture to rescue the State of Tamil Nadu, the Tamil Nadu Electricity Board as well as TIDCO, which got caught into a project that became a non-starter. But they have now become the victim.

19.The State of Tamil Nadu, by Tamil Nadu Amendment Act 16/97 inserted Section 25A into the Land Acquisition Act, 1894. This Section starts with a non-obstante clause. This Section makes the compensation awarded in excess of the amount awarded by the Collector, payable by the party for whom the acquisition is made. The acquisition in this case was not made for the benefit of NLC. NLC was roped in to save the State Corporation as well as the State of Tamil Nadu. Therefore, in no way, the liability can be fastened upon them.

20.However, bringing our attention to two more amendments made by the State of Tamil Nadu, one to Section 19 and another to Section 20, Mr.M.Vijayan, learned counsel for TIDCO contended that the appellant was dragged into the picture only because of the hopes that they gave and the agreements that they have entered into from the year 2005 up to the year 2012 when they finally withdrew from the picture. Therefore, he vehemently opposed the stand taken by the appellant that they are not liable to pay any compensation.

21.We have carefully considered the above submissions. Under Section 19(1) of the Act, the State of Tamil Nadu inserted clause (bb), which made it mandatory for the impleadment of the third parties, if the acquisition was not for the Government. Similarly, by the Amendment Act 14/90, clause (d) was inserted under Section 20 to enable the Court to serve notice upon all the parties for the benefit of whom, the acquisition was made. These amendments were necessitated in view of a controversy that was prevailing at that time as to whether the requisitioning body would have a right to be heard in the matter of determination of compensation at all.

22.But the fact that NLC was a necessary party, is different from the question as to whether they have any liability to pay the compensation or not. NLC was not the requisitioning body when the project was contemplated. It was roped in half way through when the joint venture floated by the Government failed and after Reliance Industries Limited backed out, after participating in the international competitive bidding. A person, who came to rescue the Government, cannot be made a victim. Therefore, the first contention of the learned counsel for the appellant deserves to be upheld.

23.In view of our finding that the appellant does not have any liability, the second question as to whether the quantum of compensation was correct or not is not answered by us.

12. In the light of the abovesaid authoritative pronouncement of the Division Bench exonerating the appellant from any liability to pay the compensation or the enhanced compensation, in such view of the matter, when the appellant has been made liable to pay the compensation by the referral Court only based upon the G.O.MS.No.62 dated 06.07.2006 and when the abovesaid G.O. had also been considered by the Division Bench and the Division Bench having finally resolved to exonerate the appellant from paying the enhanced compensation, in such view of the matter, following the decision of the Division Bench, I hold that the determination of the referral Court directing the appellant to pay the enhanced compensation is liable to be set aside and accordingly, the appeal preferred by the appellant is entitled for acceptance. Accordingly, the point No.1 is answered in favour of the third respondent/appellant.

Point No.2:

13. Following the answer to Point No.1, the judgment and decree dated 30.09.2011, passed in L.A.O.P. No.1757 of 2008, on the file of the Special Court No.II, Jayamkondam directing the appellant to pay the enhanced compensation is set aside and resultantly, I hold that the enhanced compensation fixed by the referral Court has to be paid by The Executive Director, Tamil Nadu Industrial Development Corporation, Egmore, Chennai - 600 008, who is arrayed as the third respondent herein and accordingly, the First Appeal is disposed of. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Judge,
   Special Court No.II,
   Jayamkondam.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.King & Patridge, Advocate Sr.87094
+1cc to the Special Government Pleader Sr.86951

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