

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 13787 of 2023

**Indian Oil Corporation Limited (Pipeline Division)
and another**

Vs.

Sibapriya Das Gupta and another

For the petitioners	:	Mr. Pratik Dhar, Mr. Biswaroop Bhattacharya, Ms. Sharmistha Ghosh
For the respondent no.2	:	Mr. Jayanta Mitra, Mr. Indranil Nandi, Mr. Deba Prasad Samanta, Mr. Sayak Konar
Hearing concluded on	:	17.08.2023
Judgment on	:	25.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is the Indian Oil Corporation (IOCL), Pipeline Division and petitioner no.2 is its Deputy General Manager (Construction).
2. The present challenge has been preferred by the IOCL against a re-assessment of compensation payable by the IOCL to the private respondent no.2 for acquiring right of user of the land of respondent no. 2. The respondent no.1/Competent Authority

(CA) has revised, by the impugned order, the compensation originally granted and has enhanced the same.

- 3.** Learned senior counsel appearing for the petitioners contends that Section 10(1) of the Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act, 1962 (hereinafter referred to as, “the 1962 Act”) provides that any person interested in the land, who has suffered any damage, loss or injury in the exercise of powers conferred on the authorities by Sections 4, 7 or 8 of the Act, is allowed to approach for compensation before the Competent Authority in the first instance. If the amount adjudicated or awarded by the CA is not acceptable to either of the parties, an appeal is provided for before the District Judge.
- 4.** It is argued that sub-section (3) of Section 10 stipulates the respective powers of the CA or the District Judge while so determining compensation.
- 5.** The petitioners argue that in the present case, the CA exceeded his jurisdiction in reviewing his own order, instead of relegating the private respondent to the appropriate appellate authority, that is, the District Judge. Hence, the impugned order is vitiated by lack of inherent jurisdiction.
- 6.** It is next contended that although in a previous writ petition between the same parties a question arose as to the pendency of an application before the CA, which resulted in an order passed by a coordinate Bench, recording the consent of counsel for the present petitioners as well, for the CA to adjudicate all issues, the

direction was restricted to an adjudication by the CA under the provisions of the 1962 Act, as reflected from the order itself.

7. Moreover, the consent was given in a different context, within the perspective of the application filed by the IOCL for an out of court settlement before the CA and could not be broadened to mean a consent for re-adjudication on merits.
8. That apart, it is argued that no court or consent can confer jurisdiction on an authority which otherwise lacks it.
9. Learned senior counsel appearing for the petitioners cites *Kalabharti Advertising Vs. Hemant Vimalnath Narichania and others*, reported at (2010) 9 SCC 437, where it was held that the court cannot confer a jurisdiction upon any authority. Conferring jurisdiction upon a court/tribunal/authority is a legislative function and the same cannot be conferred either by the court or by the consent of the parties. Such an order passed by the High Court, it was held, is without jurisdiction and, therefore, a nullity.
10. Learned senior counsel next cites *S. Sethuraman Vs. R. Venkataraman and others*, reported at (2007) 6 SCC 382. It was observed therein by the Supreme Court that despite having submitted to the jurisdiction of an appellate authority, the petitioners could not be stopped from challenging the final order of the appellate authority through a writ petition. It was observed that the principle of *estoppel* has no application in a case of the nature as arose therein and the appellant did not and could not confer upon an authority a jurisdiction which it did not derive

under the statute. If jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner, it was held. The jurisdiction of the appellate authority pursuant to the order the Division Bench in the said case was passed on consent of the parties, which was not in dispute, but the court held that only because the appellant consented to re-examination of the matter by the appellate authority, which it was otherwise entitled to, the same by itself could not have been found to be a ground for his becoming ineligible to challenge the final order passed by the appellate authority when a large number of jurisdictional errors were committed by it.

- 11.** Learned senior counsel appearing for the respondent-Authorities places stress on Section 10(3) of the 1962 Act. It is submitted that the said sub-section clearly enumerates similar and co-equal powers on the CA and the District Judge insofar as adjudication under the said Section is concerned. As such, the delineation of jurisdiction between the first authority and the appellate authority is not so stark in Section 10 so as to say that there is absolute lack of inherent jurisdiction of the CA to grant further compensation.
- 12.** That apart, it is contended that the adjudication was invited by the IOCL itself, which had made an application before the CA after the initial compensation was awarded. Also, a clear admission was made on behalf of the IOCL before the previous writ court to the effect that the adjudication of the dispute be

relegated to the CA. The respondents, after taking a chance before the CA and submitting to the jurisdiction of the authority, cannot be permitted to resile now by challenging the jurisdiction of the authority after an unfavourable order was passed.

13. Learned senior counsel for the respondents cites *Nilkantan and Bros. Construction Vs. Superintending Engineer, National Highways, Salem and others*, reported at AIR 1988 SC 2045. The contention of the petitioner in the case was that the arbitrator had no jurisdiction to proceed with and complete the arbitration. The court held that he entered into the task of adjudication with the knowledge and consent of the petitioner and the petitioner had his active participation in the proceeding before him.
14. It was observed that the petitioner had knowledge of the change of the incumbent but did not protest and the proceedings went on before the new incumbent. The petitioner, thus, had knowledge of the alleged defect and had acquiesced in the proceedings. It was observed that the objection as to violation of principles of natural justice could not be entertained. If the parties to the reference either agree beforehand to the method of appointment, or afterwards acquiesce in the appointment made, with full knowledge of all the circumstances, they will be precluded from objecting to such appointment as invalidating subsequent proceedings.
15. The petitioners also rely on *Arbn. Jupiter General Insce. Co. Ltd. Vs. Corporation of Calcutta*, reported at 1956 Calcutta 470, where

it was observed that a party participating in arbitration proceedings without protest cannot afterward challenge the whole proceedings as without jurisdiction on ground of known disability of other party.

- 16.** Learned senior counsel appearing for the petitioners also cites a judgment of the Supreme Court rendered in *Prasun Roy Vs. Calcutta Metropolitan Development Authority and others*, reported at AIR 1988 SC 205, where it was held that the principles of waiver and estoppel are not only applicable where an award has been made but also where a party to the proceeding challenges the proceedings in which he participated. In the facts of the case, it was held, there was no demur but something which can be called acquiescence on the part of the respondents which precludes them from challenging the proceeding.

- 17.** Heard learned counsel for the parties. Section 10 of the 1962 Act is set out below:

“10. Compensation.- (1) Where in the exercise of the powers conferred by Section 4, Section 7 or Section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.

(2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable

to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by the that District Judge.

(3) The competent authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of—

(i) the removal of trees or standing crops, if any, on the land while exercising the powers under Section 4, section 7 or section 8;

(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner:

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.

(4) Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market value of that land on the date of the notification under sub-section (1) of Section 3.

(5) The market value of the land on the said date be determined by the competent authority and if the value so

determined by that authority is not acceptable to either of the parties, if shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.

(6) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.”

18. Sub-section (1) thereof is clear on the issue that the CA is the authority to determine the amount of compensation “in the first instance”. Sub-section (2) of Section 10 only comes in where the compensation determined by the CA under sub-section (1) is not acceptable to either of the parties, when an application is to be made by the aggrieved party to the District Judge having territorial jurisdiction, to be determined by the District Judge.
19. Thus, the compartmentalization of the first authority and the appellate authority is clear and unambiguous in the statute. The reliance of the respondents on sub-section (3), to portray that the said provision confers co-equal powers on the competent authority and the District Judge, is rather misplaced. It is clearly stipulated in sub-section (3) that the CA or the District Judge, while determining the compensation *under sub-section (1) or sub-section (2)*, “*as the case may be*”.....(emphasis supplied). Thus, the powers are not co-equal between the two authorities but to be exercised by the CA or the District Judge, under sub-section (1) or sub-section (2) respectively. The expression used to distinguish the two is “as the case may be”.

- 20.** Sub-section (3) is less on the competence and power of the authorities and more on the modality of assessing damage or loss. The yardsticks for so assessing have been stipulated in sub-section (3) as the removal of trees or standing crops, temporary severance of the land, any other injury to property or the earnings of the person concerned, etc.
- 21.** In fact, sub-section (5) of Section 10 further reiterates that the market value of the land on the relevant date shall be determined by the CA and if the value was determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2) be determined by that District Judge. The Section continues to stipulate in sub-section (6) that the decision of the District Judge under sub-section (2) or sub-section (5) shall be final. Thus a terminus is given to the proceeding once the matter is decided by the appellate authority, that is, the District Judge, which is, obviously, absent in the case of the CA, which is but the authority in the first instance.
- 22.** Thus, the clear delineation of authorities between the CA and the District Judge cannot come under the scanner, even on a plain reading of the relevant provisions of law.
- 23.** The next question which arises is the alleged submission of the IOCL to the jurisdiction of the CA.
- 24.** However, a clue in that regard has been given in the impugned order of the CA itself. In the said order, it is recorded that by an

e-Mail dated 25.01.2022 the matter was referred to the CA by the GM (Const.), IOCL, Haldia for *out of courts settlement* (emphasis supplied). The CA further continues that consequent upon receiving the mail, the proceeding-in-question was initiated which was ultimately kept in abeyance in pursuance to the pendency of the previous writ petition before this court.

- 25.** The CA observes that however, having regard to the subsequent judgment dated 23.03.23 passed by this Court, the CA is considering the representation dated 17.2.2022 made by the petitioner before the CA and that therefore, it cannot be contended by IOCL that the CA had become *functus officio* and cannot decide the question of payment of additional compensation or further compensation to the petitioner. The CA further derived his perceived power from Section 2 of the 1962 Act, apart from the direction of the coordinate Bench of this Court. In such context, we are to scrutinize the relevant observations in the order of the coordinate Bench.
- 26.** The said judgment and order was delivered on March 23, 2023 in WPA No.19895 of 2021 between the private respondent and the present petitioners.
- 27.** It was observed in paragraph no.3 that in course of hearing, learned senior counsel appearing for the present respondents drew the attention of the court to the letter dated February 17, 2022 which was addressed to the CA and it was submitted that issue regarding payment of compensation in terms of the 1962

Act was pending for consideration before the CA and the court, instead of entering into the merits of the claims and counter-claims of the parties, may direct the CA to decide the prayer for payment of compensation contained in the letter dated February 17, 2022.

28. Learned senior counsel appearing for the IOCL did not oppose the prayer to the effect that a direction may be passed upon the CA for deciding the prayer for payment of compensation to the petitioner under provisions of the 1962 Act. In such context, the court observed that the payment of a sum of Rs.42,12,244/- to the present private respondent on account of compensation was not in dispute but the “present grievance of the petitioners is with regard to enhancement of compensation and payment of any further sums” in terms of the provisions of the 1962 Act. Accordingly, the writ petition was disposed of by directing the CA to consider the prayer of the petitioner therein (present respondent no.2) contained in the letter dated February 17, 2022 within the time as stipulated therein.

29. A careful perusal of the said order shows that the direction of the Court was passed on a subtly different footing than the concession given by the IOCL. Learned counsel appearing for the IOCL had not opposed the prayer of the petitioner that a direction be passed upon the CA “deciding the prayer for payment of compensation to the petitioner under the provisions of the 1962 Act”.

- 30.** The said submission was not a clear-cut and unambiguous submission to the authority of the CA to re-adjudicate the issue of compensation afresh on merits. The decision on the prayer for payment of compensation of the petitioner under the provisions of the 1962 Act implicitly contemplates an element of adherence to the 1962 Act, as well as adjudication on the prayer of the private respondent herein. Section 10 is a part of the 1962 Act and delineates the respective jurisdictions of the first authority (CA) and the appellate authority (District Judge). Again, a direction to arrive at a decision on the prayer of the present respondent no.2 did not mean that such prayer had to be necessarily allowed. A decision may also include adjudication on the question of authority and jurisdiction. As such, it cannot be said that there was an unqualified submission of the IOCL to the jurisdiction of the CA to re-adjudicate the compensation granted to the private respondent.
- 31.** Thus, distinguishing the consent from the ordering portion, we find that the direction of the learned Single Judge was for the CA to “consider the prayer of the petitioner contained in the dated February 17, 2022”. A consideration of the prayer need not necessarily mean that the CA has to allow it. Such a direction for consideration also includes the option to reject, including a rejection on the ground of jurisdiction as well. Thus, in the first place, neither the submissions of the IOCL nor the direction of the coordinate Bench “conferred” any jurisdiction on the CA,

which it does not otherwise have in law. Hence, the adjudication of the prayer of the private respondent herein, as embodied in its letter dated February 17, 2022, could very well have culminated in rejection on the ground of jurisdiction alone.

32. Another aspect of the matter is that the proceeding before the CA had not been initiated either on the direction of the coordinate Bench or on the letter dated February 17, 2022 of the respondent no.2 but on an e-Mail dated January 25, 2022 by the IOCL specifically for “out of courts settlement”. Although there is some doubt as to whether even such exercise can be entered into by the CA, such doubt may also be applicable to the appellate authority and, as such, was rightly taken up by the CA to avoid unnecessary relegation of the parties from pillar to post.
33. However, as the said e-Mail said, the said consideration was confined essentially to an out of courts settlement which, by definition, is an agreed resolution between the parties. The moment such resolution failed and there was no consensus *ad idem*, the CA ought to have refused to interfere and relegate the aggrieved party to an appeal before the District Judge, instead of assuming authority which it does not have in law. Thus, the assumption of jurisdiction by the CA is patently *de hors* the law and cannot be given a sanction by a court of law.
34. The Act of 1962 does not confer any power of review or re-adjudication on the CA.

- 35.** In the present case, the Panchnama executed in favour of the respondent no.2, for the purpose of awarding compensation in the first place to the respondent no.2, has been annexed to the writ petition and considered by the CA as well in the impugned order.
- 36.** The CA, in his order, refers to him not being consulted. However, the complete sentence of the CA shows that the said consultation was with regard to agreements entered into between the IOCL and third parties, who according to the respondent no.2 were similarly placed and had got more compensation. The same was a component of the challenge of the respondent no.2 before the CA afresh after the compensation was awarded to him in the first place.
- 37.** In fact, there is no dispute that the CA was a party to the Panchnama which granted compensation in the first instance to the respondent no.2 within the contemplation of Section 10(1) of the 1962 Act.
- 38.** Hence, as clarified in sub-sections (2), (3) and (5) of Section 10 of the 1962 Act, the scope of challenge by a party to whom the adjudication is not acceptable, is only before the District Judge having territorial jurisdiction and not before the CA afresh. Hence, the argument of the present petitioners regarding lack of jurisdiction of the CA is justified.
- 39.** It has to be added here that the argument regarding the IOCL having acquiesced to the jurisdiction of the CA cannot be

accepted also because it took the objection as to the authority of the CA, who was argued to have become defunct or functus officio, before the CA himself. The impugned order of the CA records such argument. Such objection, at the outset of the adjudication by the CA, read in conjunction with the interpretations of the submission of the IOCL before the coordinate Bench and the direction given by the said Bench, unerringly indicates that the IOCL never accepted the authority of the CA to decide the question of adjudication afresh on merits.

- 40.** Hence, in view of the above discussions, WPA No.13787 of 2023 is allowed on contest, thereby setting aside the impugned order passed by the Competent Authority/respondent no.1 dated May 22, 2023 whereby the compensation to be awarded to the respondent no.2 was decided afresh by the respondent no.1. However, in view of the pendency of the litigation for so long, it is deemed that the respondent no.2 is not yet out of time for preferring a challenge against the compensation awarded in the first instance before the concerned District Judge having territorial jurisdiction to decide a challenge under Section 10(2) of the 1962 Act.
- 41.** If the respondent no.2 prefers such a challenge, it will be deemed that the starting point of the limitation for the same commences as on this date. In such a case, the concerned District Judge shall decide the issues involved therein in accordance with law and without being influenced unnecessarily by any of the

observations made herein, since this Court has not entered into the merits of the enhancement/further compensation sought by the respondent no.2.

- 42.** There will be no order as to costs.
- 43.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)