

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.171 OF 2023

The State of Maharashtra, through the Collector, Nagpur and another

Vs.

Shri Keshodeo s/o Kenkadeo Bhaiswar and another

AND

CIVIL APPLICATION (CAO) NO.95 OF 2023

Shri Kusum Keshodeo Bhaiswar and another

vs.

The State of Maharashtra, Through the Collector, Nagpur and another

IN

CROSS OBJECTION NO.6 OF 2011

IN

FIRST APPEAL NO.1351 OF 2009

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. T. H. Udeshi, AGP for appellants/State.

Mrs. R. Sirpurkar, Advocate h/f Mr. C. R. Najbale, Advocate for the respondents in Civil Application No.171/2023.

Mrs. R. Sirpurkar, Advocate h/f Mr. C. R. Najbale, Advocate for the respondents in Civil Application No.95/2023.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 07/02/2023
PRONOUNCED ON: 10/03/2023

1. Present application is filed by the appellants/State to add necessary party.

2. As per the contention of the appellants, present appeal has been preferred against the Judgment and Award passed by the Joint Civil Judge Senior Division, Nagpur in Land Acquisition Case No.260/2002 dated 25.11.2005.

3. In the instant matter, the land of the

respondent bearing Survey No.74 admeasuring 4.10 hectare of Mouza Isapur, Tq. Katol, District Nagpur, was acquired for the purpose of submergence of Chikhali Nala Prakalp/Project under the Land Acquisition Act.

4. The acquiring body i.e. Executive Engineer, Medium Project Division, Nagpur though being the necessary party was not pleaded as a party respondent before the Reference Court in Land Acquisition Case No.260/2002 and the impugned Judgment and order came to be passed by the Joint Civil Judge Senior Division, Nagpur. As per the contention of the appellants, as Executive Engineer, Medium Project Division was not party in the reference proceeding, appellants have also not made the party to it. Now, it is settled position of law that the acquiring body is a necessary party in the Land Acquisition case, and therefore appellants be permitted to add Executive Engineer, Medium Project Division, Nagpur be added as a party respondent.

5. The said application is strongly opposed by the respondents on the ground that the claimants have already advanced their arguments on 04.01.2023 and matter being part heard kept on 09.01.2023 for the argument of the State. In the midst of the hearing the said application is moved. The grounds mentioned in the application are vague in nature without referring to

any provision. The Land Acquisition Officer who has passed the award was already party to the proceeding and present appeal is filed by the Land Acquisition Officer who has in an independent capacity preferred this appeal. There is no ground in the appeal memo that acquiring body is not made a party and therefore, application deserves to be rejected.

6. Civil Application (CAO) No.95/2023 is also filed by the respondents/State for adding Executive Engineer, Medium Project Division, Nagpur as a necessary party in the cross-objection. Similar contention is raised in the present application also that being Executing Engineer, Medium Project Division is the acquiring body. In view of the settled position of law the Executive Engineer, Medium Project Division, Nagpur be added as a necessary party in cross-objection as a party respondent.

7. The said application is also opposed by the cross-objectors.

8. Heard learned Advocate Mrs. Shirpurkar for the respondents. She vehemently submitted that the application is filed on vague grounds. There is no such provision to add the acquiring body as a party. No ground is raised by the appellants/State to that effect and hence application deserves to be rejected.

9. She further submitted that absence of VIDC is of no consequence as the State has preferred this appeal. The VIDC also comes under the control of the State, and therefore application deserves to be rejected.

10. On the other hand, learned AGP Ms. Udeshi, for the State supported the contention which is mentioned in the application and submitted that in view of the Hon'ble Apex Court Judgment in case of **Abdul Rasak and others Vs. Kerala Water Authority and others**, reported in **2002 AIR SCW 477**, the acquiring body is the necessary party and hence appellants be permitted to add the acquiring body as a party respondent.

11. Heard both the sides. Perused the application.

12. It is not in dispute that the land owned by the respondents original claimants is acquired by the State Government for the project of Chikhli Nala Project. It is also not in dispute that acquired land Survey No.74 admeasuring 4.10 hectare of Mouza Isapur is owned by the respondents. Admittedly, the notification under Section 4 was issued on 22.01.1998 and award was passed. Being aggrieved and dissatisfied with the said award passed by the Land Acquisition Officer, the claimants have preferred the reference bearing No.260/2002. It is further not disputed that at the time

of preferring the reference the Executive Engineer, Medium Project Division, was not made a party.

13. Learned AGP Ms. Udeshi for the State placed reliance in the case of **Executive Engineer, Minor Irrigation Division, Nagpur Vs. Mainabai wd/o Khushyalrao Dangore**, reported in **2008 (3) Mh. L.J. 151** wherein this Court has considered various aspects of the case and also dealt with the issue as to whether the acquiring body is a necessary party or not. This Court has referred the Judgment of the Hon'ble Apex Court in the case of **Abdul Rasak and others** (supra).

14. Learned AGP Ms. Udeshi, for the State placed her reliance in the case of **Executive Engineer, Minor Irrigation Division, Nagpur Vs. Mainabai wd/o. Khushyalrao Dangore and others**, reported in **2008 (3) Mh.L.J. 151**, wherein this Court has considered various aspects of the case and also dealt with the issue that whether the acquiring body is necessary party or not. This Court has referred the judgment of the Hon'ble Apex Court in the case of **Abdul Rasak and others Vs. Kerala Water Authority and others**, reported in **2002 AIR SCW 477** wherein it has observed thus :

“Shri T. L. V. Iyer, the learned senior counsel for the claimant-appellants has submitted that Kerala Water Authority is successor of Public Health Engineering Department of the State Government and

bound by the proceedings conducted by or against the State Government and, therefore, the Constitution Bench decision does not have any applicability to the facts of the present case and the High Court ought not to have set aside the awards and remanded the cases to the reference Court. We find it difficult to subscribe to the view so forcefully canvassed by the learned senior counsel for the appellants. K. W. A. came into existence as a statutory Corporation on 1 st April, 1984. It may be said to have succeeded to the liability incurred by the State Government so far as the quantum of compensation awarded by the Collector is concerned but so far as the enhancement in the quantum of compensation is concerned, it will be a liability of the K. W. A. incurred by it after its coming into existence and, therefore, to the extent of enhancement, the Authority was certainly entitled to notice and right to participate in the proceedings before the reference Court leading to enhancement of compensation.”

15. The facts in case of **Abdul Rasak and others** (supra) are almost identical with the case in hand. As already observed that the Executive Engineer, Medium Project Division, Nagpur was not a party in the reference before the Court. Admittedly, the liability would be of acquiring body, and therefore to the extent of enhancement also the authority was certainly entitled for the notice and right to participate in the proceedings before the Reference Court. This Court has already

considered this aspect on the basis of the Judgment of the Hon'ble Apex Court.

16. This Court further observed that the Hon'ble Apex Court has in fact concurred with the decision in **U. P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by Lrs. and others**, reported in (1995) 2 SCC 326 and it is for this reason also it must be said that the Hon'ble Apex Court has refused to grant leave in the facts and circumstances of that case.

17. It is further observed by this Court that the decision in the case of **Abdul Rasak and others** (supra) cannot be said to be *per curiam* and held that the acquiring body is entitled to be added as a party and was in fact entitled to notice.

18. In view of the reasons aforesaid mentioned both the applications deserve to be allowed. The appellants/State as well as cross-objectors shall add the Executive Engineer Medium, Project Division, Nagpur as a necessary party in appeal memo as well as in cross-objection as a respondent.

19. Both the civil application Nos.171/2023 and Civil Application No.95/2023 are disposed of.

(URMILA JOSHI-PHALKE, J.)