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**(2010) 12 SC CK 0008**

**Supreme Court of India**

**Case No:** Civil Appeal No''s. 10326-10327 of 2010 (Arising out of S.L.P. (C) No''s. 22025-22026 of 2001) , Civil Appeal No. 10328 of 2010 (Arising out of S.L.P. (C) No. 22027 of 2001) and Civil Appeal No''s. 6564 and 6565 of 2001

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| Delhi Development Authority | | APPELLANT |
| | Vs | |
| Bhola Nath Sharma (Dead) by L.Rs. and Others | | RESPONDENT |

**Date of Decision:** Dec. 8, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 136, 141, 226
- Delhi Development Act, 1957 - Section 22(1), 3
- Industrial Disputes Act, 1947 - Section 2
- Land Acquisition Act, 1894 - Section 11, 18, 20, 24, 26

**Citation:** AIR 2011 SC 428 : (2011) 2 AWC 2126 : (2011) 2 MLJ 255 : (2011) 1 RCR(Civil) 820 : (2011) 2 SCC 54

**Hon'ble Judges:** G. S. Singhvi, J; Asok Kumar Ganguly, J

**Bench:** Division Bench

**Advocate:** Dhruv Mehta, Aman Vachher, Yash, Ashutosh Dubey, Reeta D. Puri and K.L. Mehta and Co., Geeta Luthra, D.N. Goburdhan, V.B. Saharya for Saharya and Co, for the Appellant;

**Final Decision:** Disposed Of

**Judgement**

G.S. Singhvi, J.

Whether the Delhi Development Authority (for short, ''the DDA''), at whose instance land of the Respondents and others situated at Village Bahapur was acquired for Planned Development of Delhi and who was asked to release Rs. 14,15,82,253/- for payment of compensation can be treated as "person interested" within the meaning of Section 3(b) of the Land Acquisition Act, 1894 (for short, ''the Act'') and it was entitled to an opportunity to participate in the proceedings held before the Land Acquisition Collector and the Reference Court for determining the compensation is

the question which arises for consideration in these petitions filed against the judgment of the Division Bench of the Delhi High Court whereby market value of the acquired land was fixed at Rs. 2,000/- per sq. yd. and direction was issued for payment of compensation to the contesting Respondents with 15 per cent solatium and 6 per cent interest.

2. Since the DDA was neither made a party to the proceedings held by the Land Acquisition Collector or the Reference Court nor it was given an opportunity to adduce evidence on the issue of determination of compensation and the High Court substantially increased market value of the acquired land without issuing notice to it, an application has been filed on behalf of the DDA for permission to file the special leave petitions. Another application has been filed for condonation of 372 days delay in filing the special leave petitions.

3. The case of the DDA is that its functionaries came to know about the impugned judgment only in June, 1999 when letter dated 3.6.1999 sent by the Land Acquisition Collector for release of Rs. 14,15,82,253/- was received by the Member (Finance). According to the DDA, a clarification was sought from the Land Acquisition Collector on the issue of its liability to pay more than Rs. 14 crores by pointing out that a portion of the acquired land was occupied by the Jal Board but without waiting for the latter''s response, Sub Divisional Magistrate, Kalkaji issued warrant dated 14.10.1999 for attachment of the bank account u/s 70 of the Punjab Land Revenue Act, 1887 necessitating challenge to the direction given by the High Court for payment of enhanced compensation to the contesting Respondents. In the application for condonation of delay, it has been averred that the delay was occasioned because after having learnt about the judgment of the High Court, the concerned functionaries of the DDA took some time to collect the papers relating to the acquisition and the special leave petitions were filed after obtaining opinion of the Advocate-on-Record and the Solicitor General.

4. In the counter affidavit filed by Shambhu Nath Sharma (Respondent No. 2 in SLP(C) Nos. 22025 of 2001), reference has been made to orders dated 12.4.1999 and 13.10.1999 passed by this Court whereby SLP (C) CC No. 1608 of 1999 - Union of India and Anr. v. Bhola Nath Sharma (Dead) By L.Rs. and Anr. and Review Petition (C) No. 1359 of 1999 filed in SLP(C) CC No. 1608 of 1999 were dismissed and it has been pleaded that the DDA cannot now challenge the judgment of the High Court. Respondent No. 2 has also questioned the locus of the DDA by asserting that even though the acquired land has been placed at its disposal u/s 22(1) of the Delhi Development Act, 1957 (for short, ''the 1957 Act''), the ownership thereof has not been transferred and as per the DDA''s own case, it is not obliged to pay compensation for the acquired land. In support of this assertion, Respondent No. 2 has placed reliance on the contents of para (ix) of Civil Writ Petition No. 6414 of 1999 filed by the DDA for quashing warrant of attachment dated 14.10.1999.

5. Shri U.S. Jolly, Commissioner (Land Management) has filed rejoinder affidavit on behalf of the DDA. In paragraph 7(a) of his affidavit, Shri Jolly has categorically averred that the land was acquired by the Lieutenant Governor, Delhi pursuant to requisition sent by the DDA vide D.O. No.F.14(36)/69/CRC/DD dated 18.1.1973, which was forwarded by the Land and Building Department of Delhi Administration to the Land Acquisition Collector (North) vide letter No. F.9(39)/70-L7B dated 17.6.1975. Copies of D.O. dated 18.1.1973 and letter dated 17.6.1975 have been annexed with the rejoinder affidavit.

6. One Jagdev Singh, son of Hari Chand claiming himself to be Respondent No. 2 has filed counter affidavit dated 4.7.2002 and opposed the prayer of the DDA for condonation of delay by asserting that no explanation has been given for 150 days'' delay after the concerned authorities came to know about the impugned judgment.

7. We have heard learned Counsel for the parties on the DDA''s locus standi to challenge the judgment of the High Court. It is not in dispute that proposal for acquisition of the land was initiated by the DDA vide D.O. dated 18.1.1973. It is also not in dispute that neither the Land Acquisition Collector nor the Reference Court gave opportunity to the DDA to adduce evidence for the purpose of determining the amount of compensation. The High Court did not issue notice to the DDA apparently because it was not a party to the proceedings held by the Land Acquisition Collector and the Reference Court. Notwithstanding this, the DDA has been asked to release Rs. 14 crores and odd for payment of compensation to the Respondents. Therefore, there is ample justification for entertaining its prayer for grant of permission to file the special leave petitions.

8. We are further of the view that delay in filing the special leave petitions deserves to be condoned because after having learnt about the impugned judgment, the concerned functionaries of the DDA took steps to collect the papers relating to the acquisition proceedings, sought opinion of the Advocate-on-Record and the Solicitor General and then filed the special leave petitions. In the facts of this case, it is appropriate to invoke the principles laid down in Collector, Land Acquisition v. Katiji (1987) 2 SCC 107 and State of Haryana v. Chandra Mani (1996) 3 SCC 132 for the purpose of condonation of delay. Accordingly, the application filed by the DDA for grant of permission to challenge the judgment of the High Court is allowed and delay in filing of the special leave petitions is condoned.

9. Leave granted.

10. By notification dated 30.6.1978 issued u/s 4(1) of the Act, the Lieutenant Governor of Delhi proposed the acquisition of 70 bighas 13 biswas land situated at Village Bahapur including that of the contesting Respondents for a public purpose, namely, Planned Development of Delhi. After considering the objections filed by the land owners, the Lieutenant Governor issued declaration u/s 6 of the Act, which was published in the official gazette dated 19.2.1979 for acquisition of 62 bighas 1

biswas land.

11. The Land Acquisition Collector passed award dated 25.6.1979 whereby he divided the acquired land into three Blocks i.e. ''A'', ''B'', ''C'' and fixed market value thereof at the rate of Rs. 84/- per sq. yd., Rs. 63/- per sq. yd. and Rs. 42/- per sq. yd. respectively.

12. Feeling dissatisfied with the award of the Land Acquisition Collector, the Respondents filed applications u/s 18 of the Act for making reference to the Court for determination of the amount of compensation. Thereupon, the Collector made reference to the concerned Court. Vide judgment dated 27.9.1980, the Reference Court disposed of L.A.C. No. 2 of 1980 - Bhola Nath and Anr. v. Union of India and held that the claimants are entitled to compensation at the rate of Rs. 175 per sq. yd. with 15 per cent solatium and 6 per cent interest w.e.f. 30.6.1978. L.A.C. No. 105 of 1984 - Smt. Narbada Devi and Ors. v. Union of India was disposed of by the Reference Court vide judgment dated 14.5.1984 by dividing the land of the claimants into two Blocks i.e. ''B'' and ''C'' and fixing market value of the two blocks at Rs. 129/- per sq. yd. and Rs. 108/- per sq. yd. respectively.

13. The contesting Respondents challenged the judgments of the Reference Court in RFA Nos. 65 of 1981 and 266 of 1984 and prayed for grant of compensation at the rate of Rs. 575/- per sq. yd. After 17 years of filing the appeal, Bhola Nath and another sought leave of the court to amend the memo of appeal so as to enable them to claim compensation at the rate of Rs. 3000/- per sq. yd. Similar prayer was made on behalf of Smt. Narbada Devi and others by filing separate application sometime in 1996. The Land Acquisition Collector opposed the prayer for amendment but the High Court allowed the applications.

14. Thereafter, the Division Bench of the High Court disposed of both the appeals and held that the contesting Respondents are entitled to enhanced compensation at the rate of Rs. 2000/- per square yard with 15% solatium and 6% interest from the date of dispossession.

15. Before proceeding further, we consider it proper to mention that the Union of India and the Land Acquisition Collector had unsuccessfully challenged the impugned judgment inasmuch as S.L.P.(C) No. 1608 of 1999 filed by them was dismissed by this Court on 12.4.1999 and Review Petition No. 1359 of 1999 was dismissed on 13.10.1999. For the sake of convenient reference, the relevant portions of order dated 12.4.1999 are extracted below.

Delay condoned.

We asked learned Counsel whether it was correct that possession of the land had been taken in 1972. His reply was that there was no evidence in support of this statement in the judgment and order under appeal. We asked him whether that had been taken as a ground in the SLP His answer was to refer to ground (L) which says,

"whether the High Court could grant interest to the Respondents for 6 years prior to the issue of Section 4 Notification? That is by no means an answer to the question that we asked.

The SLP is dismissed.

16. Bhola Nath Sharma (Dead) by L Rs. and another and Smt. Narbada Devi and others also filed special leave petitions, which were registered as SLP (C) Nos. 19729 of 1998 and 18433 of 1998. After issuing notice, the Court granted leave in both the cases and the special leave petitions were converted into Civil Appeal Nos. 6564 and 6565 of 2001. After some time, the Respondents applied for and they were granted permission to withdraw the appeals with the rider that the cross objections filed by the Union of India and the Land Acquisition Collector shall remain pending.

17. Shri Amarendra Sharan, learned senior counsel argued that the impugned judgment is liable to be set aside because the Land Acquisition Collector and the Reference Court did not give opportunity to the DDA to participate in the proceedings held before them for determining the amount of compensation despite the fact that the land was acquired at its instance and was transferred to it u/s 22(1) of the 1957 Act. Learned senior counsel further argued that the DDA is covered by the definition of the expression "person interested" and the Land Acquisition Collector and the Reference Court committed grave illegality by fixing market value of the acquired land and the amount of compensation payable to the Respondents without giving it an opportunity to adduce evidence in terms of the mandate of Section 50(2). Shri Amarendra Sharan submitted that the Division Bench of the High Court also committed serious error by directing payment of compensation to the contesting Respondents at the rate of Rs. 2,000/- per sq. yd. without giving opportunity of hearing to the DDA and ignoring that it will have to provide funds for payment of compensation to the land owners. In support of this argument, Shri Amarendra Sharan relied upon the judgments of this Court in Neyvely Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition) Neyvely (1995) 1 SCC 221 and U.P. Awas Eveam Vikas Parishad v. Gyan Devi (1995 (2) SCC 326 . Learned senior counsel then referred to the master plan of Delhi for 1961 and 2001 and the map produced by him during the course of hearing to show that the acquired land forms part of the Green Belt and argued that the High Court committed serious error by ordering payment of enhanced compensation ignoring the mandate of Section 24 of the Act, which debars the Court from taking into consideration illegal use of the land while determining the amount of compensation. Learned senior counsel emphasized that the Land Acquisition Collector and the Reference Court had concurrently held that the acquired land does not have commercial value and argued that the High Court committed serious error by increasing market value thereof on the premise that land in the surrounding areas has already been put to commercial use. Shri Amarendra Sharan referred to judgment dated 18.7.1995 rendered by the High Court in RFA No. 132 of 1980 whereby market value of the

land situated at Village Bahapur, which was acquired vide notification dated 30.11.1972 was fixed at Rs. 65,000/- per bigha and argued that even if principle of 12% increase per annum was applied for the purpose of determining market value of the land in question, the High Court could not have awarded compensation at the rate of Rs. 2,000/- per sq. yd.

18. Shri Dhruv Mehta, learned Counsel appearing for the Respondents argued that the appeals are liable to be dismissed because the DDA has not approached the Court with clean hands. Learned Counsel referred to apparently contradictory statements made at pages "J" and "L" of the List of Dates and contents of letters dated 30.6.1999 and 8.7.1999 sent by Director (LM) (HQ), DDA to the Land Acquisition Collector/SDM on the issues of payment of compensation and transfer of possession u/s 22(1) of the 1957 Act and submitted that failure of the DDA to candidly disclose all the facts should be treated as sufficient for non suiting it. Learned Counsel pointed out that even in para (B) of the grounds taken in Writ Petition No. 6414 of 1999 filed in the High Court for quashing the warrant of attachment, the DDA has claimed that possession of the acquired land was neither taken by the land acquisition authorities nor transferred to it and argued that by filing these appeals, the DDA has made an unwarranted attempt to deprive the land owners of their right to receive just and fair compensation. Shri Mehta then argued that the DDA cannot challenge the judgment of the High Court on the ground of denial of opportunity of hearing because with the dismissal of SLP (C) CC No. 1608 of 1999 jointly filed by the Union of India and the Land Acquisition Collector, the same will be deemed to have become final. Shri Mehta also relied upon the judgments of this Court in N.P. Venkateswara Prabhu v. N.P. Krishna Prabhu (1977) 2 SCC 181 and Kunhayammed v. State of Kerala (2000) 6 SCC 359 and argued that if these appeals are allowed, two inconsistent decrees will come into existence and that is legally impermissible.

19. The argument of Shri Dhruv Mehta that the Appellant-DDA should be denied relief because it has made contradictory statements and has not disclosed correct and full facts on the issues of initiation of acquisition proceedings and transfer of possession of the acquired land does not merit acceptance. A careful reading of the statements made at pages "J" and "L" of the List of Dates and contents of letters dated 30.6.1999 and 8.7.1999 written by Director (LM) (HQ), DDA does not support the assertion of the learned Counsel that the Appellant has made an attempt to mislead the Court. The minor inconsistencies here and there appear to be due to lack of coordination between various functionaries of the DDA, a phenomena not unusual in the functioning of Government departments and the agencies/instrumentalities of the State. However, such errors, omissions and inconsistencies do not justify a conclusion that the DDA is guilty of contumacious conduct.

20. The apprehension expressed by the learned Counsel that acceptance of Appellant''s prayer for setting aside the impugned judgment may lead to passing of two inconsistent decrees and his argument that dismissal of SLP (Civil) No. 1608/1999 - Union of India and Anr. v. Bhola Nath (Dead) through L.Rs. and Anr. operates as res judicata does not commend acceptance for the simple reason that the SLP filed by the Union of India and another was summarily dismissed and the question whether the DDA at whose instance the land was acquired for Planned Development of Delhi was entitled to notice and opportunity to adduce evidence in the proceedings held before the Collector and the Reference Court for the purpose of determining the amount of compensation was neither raised in the SLP (C) CC No. 1608 of 1999 nor decided by this Court. In Kunhayammed v. State of Kerala (supra), a three-Judge Bench considered the questions whether summary dismissal of the SLP and that too without deciding any question of law operates as res judicata qua the SLP filed by other party and the judgment/order of the High Court merges in the order of this Court. After examining various facets of the doctrines of res judicata and merger, the Court laid down seven propositions including the following:

(i) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the SLP is converted into an appeal.

(ii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iii) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(iv) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or

authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the SLP or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

21. In our view, proposition Nos. (iii) and (iv) extracted herein above are attracted in the present case because SLP (C) No. 1608 of 1999 filed by the Union of India and the Land Acquisition Collector was summarily dismissed without going into the merits of the Petitioners'' challenge to the judgment of the High Court and no question of law was decided by this Court. That apart, this Court neither had the occasion nor did it decide the question whether the DDA, at whose instance the land was acquired as a part of the exercise undertaken for development of the area around Kalkaji temple, was entitled to participate in the proceedings held before the Land Acquisition Collector and the Reference Court for determination of the amount of compensation because no such plea was raised in Special Leave Petition(C) No. 1608/1999.

22. We may now consider the question framed in the opening paragraph of this judgment. For deciding that question, it will be useful to notice Sections 3(aa), 3(b) and 50 of the Act, which read as under:

3(aa). the expression "local authority'' includes a town planning authority (by whatever name called) set up under any law for the time being in force.

3(b). the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

50. Acquisition of land at cost of a local authority or Company - (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference u/s 18.

23. The definition of the expressions "local authority" and "person interested" are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in P. Kasilingam v. P.S.G. College of Technology

(1995) Supp 2 SCC 348 in the following words:

A particular expression is often defined by the Legislature by using the word ''means'' or the word ''includes''. Sometimes the words ''means and includes'' are used. The use of the word ''means'' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See: Gough v. Gough; Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court.) The word ''includes'' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See: Dilworth v. Commissioner of Stamps (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of ''college'' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time.

In Bharat Cooperative Bank (Mumbai) Ltd. v. Employees Union (2007) 4 SCC 685 , this Court again considered the difference between the inclusive and exhaustive definitions and observed:

When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in the definition of "banking company" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.

In N.D.P. Namboodripad v. Union of India (2007) 4 SCC 502 , the Court observed:

The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster''s

Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of.

In Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner (2007) 5 SCC 281 , it was held as under:

When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "means and includes", it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression.

24. Undisputedly, the DDA is an authority constituted u/s 3 of the 1957 Act for promoting and securing development of Delhi according to plan and for this purpose it has the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage, etc. Therefore, it is clearly covered by the definition of the expression "local authority".

25. The definition of the expression "person interested" is in two parts. The first part includes all persons claiming an interest in the compensation to be made on account of the acquisition of land under the Act. The second part contains a deeming provision and declares that a person shall be deemed to be interested in land if he is interested in an easement affecting the land. Section 50(1) lays down that where the provisions of the Act are invoked for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the incidental charges are required to be defrayed from or by such fund or company. Section 50(2) lays down that in the cases covered by Sub-section (1), the local authority or company concerned may appear in any proceeding held before a Collector or Court and adduce evidence for the purpose of determining the amount of compensation. However, by virtue of proviso to Sub-section (2), the local authority or company is barred from seeking reference u/s 18 of the Act.

26. Section 50(2) represents statutory embodiment of one of the facets of the rules of natural justice. The object underlying this section is to afford an opportunity to the local authority or company to participate in the proceedings held before the Collector or the Court for determining the amount of compensation and to show

that claim made by the land owner for payment of compensation is legally untenable or unjustified. This is possible only if the Collector or the concerned Court gives notice to the local authority or the concerned company. If notice is not given, the local authority or the company cannot avail the opportunity envisaged in Section 50(2) to adduce evidence for the purpose of determining the amount of compensation. Therefore, even though the plain language of that section does not, in terms, cast a duty on the Collector or the Court to issue notice to the local authority or the company to appear and adduce evidence, the said requirement has to be read as implicit in the provision, else the same will become illusory. In Himalayan Tiles and Marble (P) Ltd. v. Francuis Victor Coutinho (1980) 3 SCC 223 , this Court, while examining the scope of Section 18 of the Act, referred to the definition of the expression ''person interested'' contained in Section 3(b) of the Act and some of the judicial precedents and observed:

Thus, the preponderance of judicial opinion seems to favour the view that the definition of "person interested" must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land.

(Emphasis supplied)

In Union of India v. District Judge (1994) 4 SCC 737 , this Court held that the Union of India for whose benefit the land was acquired was a ''person interested'' in the fixation of the proper and just compensation and was entitled to challenge the determination made by the competent authority/Court.

In Neyvely Lignite Corporation Ltd. v. Special Tahsildar (L.A.) (supra), the Court was called upon to consider whether the Appellant was entitled to be impleaded as party Respondent in the proceedings pending before the Reference Court. The Reference Court dismissed the application for impleadment holding that the Appellant is not an ''interested person''. The High Court upheld the order of the Reference Court and dismissed the revision filed by the Appellant. The three-Judge Bench of this Court referred to Sections 3(b) and 50 of the Act and held:

12. It is true that Section 50(2) of the Act gives to the local authority or the company right to adduce evidence before the Collector or in the reference u/s 18 as it was

specifically stated that in any proceedings held before the Collector or the Court, the local authority or the company may appear and adduce evidence for the purpose of determining the amount of compensation. However, it has no right to seek reference. Based thereon, the contention is that the limited right of adduction of evidence for the purpose of determining the compensation does not carry with it the right to participate in the proceedings or right to be heard or to file an appeal u/s 54. We cannot limit the operation of Section 3(b) in conjunction with Sub-section (2) of Section 50 of the Act within a narrow compass. The right given under Sub-section (2) of Section 50 is in addition to and not in substitution of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice. The consistent thread that runs through all the decisions of this Court starting from Himalayan Tiles case is that the beneficiary, i.e., local authority or company, a cooperative society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal against the enhanced award and decree of the Civil Court u/s 26 or of the judgment and decree u/s 54 or is entitled to file writ petition under Article 226 and assail its legality or correctness.

13. The reasons are not far to seek. It is notorious that though the stakes involved are heavy, the Government plead or the instructing officer do not generally adduce, much less proper and relevant, evidence to rebut the claims for higher compensation. Even the cross-examination will be formal, halting and ineffective. Generally, if not invariably the governmental agencies involved in the process take their own time and many a time in collusion, file the appeals after abnormal or inordinate delay. They remain insensitive even if the States involved run into several crores of public money. The courts insist upon proper explanation of every day''s delay. In this attitudinal situation it would be difficult to meet strict standards to fill the unbridgeable gaps of the delay in filing the appeals and generally entails dismissal of the appeals at the threshold without adverting to the merits of the hike in the compensation. On other hand if the notice is issued to the local authority etc. it/they would participate in the award proceedings under Sections 11 and 18, adduce necessary and relevant evidence and be heard before the Collector and the court before determining compensation. For instance that without considering the evidence in the proper perspective, the court determined the compensation.

14. If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, who would be the affected person? Is it not interested to see that the appellate court would

reassess the evidence and fix the proper and just compensation as per law? For instance the reference court determined market value at Rs. 1,00,000 while the prevailing market value of the land is only Rs. 10,000. Who is to bear the burden? Suppose State appeal was dismissed due to refusal to condone the delay, is it not an unjust and illegal award? Many an instance can be multiplied. But suffice it to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the Collector and reference court u/s 18 or in an appeal u/s 54, it/they would be interested to defend the award u/s 11 or Section 26 or would file an appeal independently u/s 54 etc. against the enhanced compensation. As a necessary or proper party affected by the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the reference court u/s 18 or in appeal u/s 54 etc.

(Emphasis supplied)

The same issue was considered by the Constitution Bench in U.P. Awas Evam Vikas Parishad v. Gyan Devi (supra). The facts show that the acquisition of land ''Trans-Yamuna Housing and Accommodation Scheme'' led to lot of litigation. The Appellant, who had not been impleaded as party in the reference proceedings or in the appeal before the High Court, unsuccessfully sought review of the High Court''s judgment and then filed special leave petitions. This Court considered the question whether the Board was entitled to participate in the proceedings held for determination of compensation, referred to Section 50(2) of the Act and observed:

The said right can be effectively exercised by the local authority only if it has information of the proceedings which are pending before the Collector as well as the reference court. In other words the right conferred u/s 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority u/s 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court and has not suffered any prejudice on account of failure to give such notice.

Thus, on an interpretation of the provisions of Section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference court to give a notice to the local authority with regard to the pendency of those

proceedings and the date on which the matter of determination of amount of compensation would be taken up.

(Emphasis supplied)

The Constitution Bench also considered the nature of remedies available to the local authority and observed:

We would now revert to the question regarding the legal remedies that are available to a local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court. In this context, it may be stated that the limitation placed by the proviso on the right conferred by Section 50(2) of the L.A. Act cannot be so construed as to deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act. The proviso to Section 50(2) only takes away the remedy of a reference u/s 18 of the L.A. Act. Examining this question in the context of the proceedings before the Collector we can envisage the following situations:

(i) No notice was given to the local authority under Sub-section (2) of Section 50 of the L.A. Act and as a result the local authority could not appear before the Collector to adduce evidence;

(ii) Notice was served on the local authority and in response to said notice the local authority appeared before the Collector; and

(iii) Notice was served on the local authority but in spite of service of such notice the local authority failed to appear and adduce evidence before the Collector.

In a case where no notice is given to the local authority the position of the local authority is not different from that of the Municipal Corporation in Neelagangabai v. State of Karnataka. In that case there was an express provision in Section 20 of L.A. Act as modified by Land Acquisition (Mysore Extension Amendment) Act, 1961 providing for service of notice on the person or local authority for whom the acquisition is made. On a construction of Section 50(2) we have found that service of such a notice is implicit in the right conferred u/s 50(2) of the L.A. Act. Since the failure to give a notice would result in denial of the right conferred on the local authority u/s 50(2) it would be open to the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge the award made by the Collector as was done in Neelagangabai case. In a case where notice has been served on the local authority and it has appeared before the Collector the local authority may feel aggrieved on account of it being denied opportunity to adduce evidence or the evidence adduced by it having not been considered by the Collector while making the award or the award being vitiated by mala fides. Since the amount of the compensation is to be paid by the local authority and it has an interest in the

determination of the said amount, which has been given recognition in Section 50(2) of the L.A. Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference.

We may now come to the stage of the proceedings before the court in a reference u/s 18 of the L.A. Act made at the instance of a person having interest in the land being acquired. At this stage also Section 50(2) of the L.A. Act envisages that the local authority has a right to appear and adduce evidence before the court. This right is independent of the right that is available to the local authority to appear and adduce evidence before the Collector. Even though the local authority had failed to appear before the Collector in spite of notice or had appeared in response to notice and had adduced evidence, the local authority may consider it necessary to adduce evidence to rebut the evidence adduced by the person who has sought the reference and to defend the award made by the Collector. Failure to give notice at this stage would result in denial of the said right of the local authority. Before we consider the remedy that is available for seeking redress against the denial of this right we may examine whether the local authority has a right to be impleaded as a party in the proceedings before the reference court. That raises the question whether the local authority can be regarded as a necessary or a proper party. The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue.) A local authority for whom land is being acquired has a right to participate in the acquisition proceedings in the matter of determination of the amount of compensation while they are pending before the Collector and to adduce evidence in the said proceedings. While it is precluded from seeking a reference against the award of the Collector it can defend the award and oppose the enhancement of the amount of compensation sought before the reference court by the person interested in the land. Moreover the local authority has a right to appear and adduce evidence before the reference court. Having regard to the aforesaid circumstances, we are of the opinion that the presence of the local authority is necessary for the decision of the question involved in the proceedings before the reference court and it is a proper party in the proceedings. The local authority is, therefore, entitled to be impleaded as a party in the proceedings before the reference court.

In case the amount of compensation has been enhanced by the court and no appeal is filed by the Government the local authority if adversely affected by such enhancement may file an appeal with the leave of the court. This right of the local authority does not depend on its being impleaded as a party in the proceedings before the reference court. Even if the local authority is not impleaded as a party

before the reference court it can file an appeal against the award of the reference court in the High Court after obtaining leave if it is prejudicially affected by the award. In case the Government files an appeal against the enhancement of the award the local authority is entitled to support the said appeal and get itself impleaded as a party. When the person having an interest in the land files an appeal in the High Court against the award of the reference court and seeks enhancement of the amount of compensation the local authority should be impleaded as a party in the said appeal and it is entitled to be served with the notice of the said appeal so that it can defend the award of the reference court and oppose enhancement of the amount of compensation before the High Court. The same will be the situation in case of an appeal to this Court from the decision of the High Court.

(Emphasis supplied)

In Agra Development Authority v. Special Land Acquisition Officer (2001) 2 SCC 646, this Court held that as the land was acquired on behalf of the Appellant, it was entitled to an opportunity to appear and adduce evidence on the issue of determination of the amount of compensation and the mere fact that it was aware of the proceedings and had participated in the meetings with the Government and Collector was not sufficient compliance with Section 50 of the Act.

In Abdul Rasak v. Kerala Water Authority (2002) 3 SCC 228 , a two-Judge Bench considered the question whether the local authority on whose behalf the land was initially not acquired but to whom the land was subsequently transferred is entitled to be heard in the matter. While rejecting the argument that the Kerala Water Authority being a successor of the Public Health Department for whose benefit the land was initially acquired is not a necessary party, the Court observed:

Shri T.L.V. Iyer, the learned Senior Counsel for the claimant-Appellants has submitted that Kerala Water Authority is the 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. KWA came into existence as a statutory corporation on 1-4-1984. 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 KWA 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.

(Emphasis supplied)

The view expressed by the Constitution Bench in Gyan Devi''s case was reiterated in Kanak v. U.P. Avas Evam Vikas Parishad (2003) 7 SCC 69 and Regional Medical Research Centre, Tribals v. Gokaran (2004) 13 SCC 125.

27. In view of the above discussion, we hold that:

(i) the DDA falls within the definition of the expressions "local authority" [Section 3(aa)] and "person interested"

[Section 3(b)] of the Act;

(ii) the DDA was entitled to participate in the proceedings held before the Land Acquisition Collector;

(iii) the failure of the Land Acquisition Collector to issue notice to the DDA and give an opportunity to it to adduce evidence for the purpose of determining the amount of compensation payable to the land owners was fatal to the award passed by him;

(iv) the DDA was entitled to notice and opportunity to adduce evidence before the Reference Court could enhance market value of the acquired land entitling the Respondents to claim higher compensation and, as no notice or opportunity was given to the DDA by the Reference Court, the judgments rendered by it are liable to be treated as nullity;

(v) the Division Bench of the High Court also committed serious error by further enhancing the amount of compensation payable to the contesting Respondents without requiring them to implead the DDA as party Respondent so as to enable it to contest their prayer for grant of higher compensation.

28. In the result, the appeals are allowed. The impugned judgment of the Division Bench of the High Court as also the judgments of the Reference Court are set aside and the matters are remitted to the Reference Court for deciding the two references afresh after giving opportunity of hearing to the parties, which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation. The Reference Court shall decide the matter without being influenced by the observations contained in the judgment of the High Court and this judgment.

29. In view of the above conclusions, the cross-objections filed on behalf of the Union of India and the Land Acquisition Collector in C.A. Nos. 6564 and 6565 of 2001 are disposed of as infructuous. However, as the judgments of the Reference Court and the High Court have been set aside and a direction has been given for fresh determination of the amount of compensation payable to the Respondents, the Union of India and the Land Acquisition Collector shall be free to participate in the proceedings before the Reference Court.

30. Since the matter is more than 32 years old, we direct the Reference Court to decide the matter as early as possible but latest within 9 months from the of date of

receipt of the copy of this judgment.

31. We further direct that if the amount of enhanced compensation determined by the Reference Court vide judgments dated 27.7.1980 and 14.5.1994 has already been paid to the Respondents or their predecessors, then they shall not be required to refund the same.