

West Bengal State Warehousing Corporation Vs Indrapuri Studio (P) Ltd. and Others

Court: Calcutta High Court

Date of Decision: April 8, 2005

Acts Referred: Constitution of India, 1950 " Article 226, 32

Land Acquisition Act, 1894 " Section 50(2)

West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 " Section 11, 11(1), 12, 2, 3(1)

Citation: (2006) 1 CHN 154 : (2005) 1 ILR (Cal) 301

Hon'ble Judges: Rajendra Nath Sinha, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Haradhan Banerjee, Kamalesh Bhattacharya and S. Ganguly, for the Appellant; HIRAK MITRA, Utpal Kr. Bose and K.A. Bhaduri, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.

This appeal is at the instance of West Bengal State Wirehousing Corporation and is directed against an award

passed by the arbitrator appointed in terms of Section 11(b) of the West Bengal Premises Requisition and Control Act, 1947 (hereinafter referred

as the Act).

2. Being dissatisfied with such an award dated January 1st, 2003 passed by the arbitrator thereby determining the compensation for the premises

requisitioned under the Act this appeal has been preferred by the appellant.

3. Mr Mitra, the learned senior advocate appearing on behalf of the owner of the property requisitioned, has taken a preliminary objection as to

the maintainability of the present appeal.

4. According to Mr Mitra, under the Act and the rules framed thereunder, it is the Collector or the person interested in the compensation that can

alone prefer an appeal and the appellant not being such a person is not entitled to maintain the present appeal. Mr Mitra points out that the State

Government after requisition of the premises had given the requisitioned property to the appellant in exercise of power conferred u/s 6 of the Act

by virtue of an agreement. According to Mr Mitra, the person, to whom property has been given after requisition in terms of Section 6 of the Act,

cannot be said to be a person interested in the compensation so as to be clothed with a right of appeal against an award passed by an arbitrator.

5. Mr. Banerjee, the learned Advocate appearing on behalf of appellant has, however, disputed the aforesaid contention of Mr. Mitra and has

submitted that this appeal having been preferred under the provisions of Section 11(1)(f) of the Act, any person ""aggrieved"" by the award can

prefer an appeal. According to Mr. Banerjee, his client is definitely aggrieved by the award inasmuch as in terms of the agreement between his

client and the State of West Bengal, his client is required to pay the amount of compensation which would be ultimately awarded by the arbitrator

in favour of the owner of the property and thus, his client is very much interested in the compensation. Mr. Banerjee submits that for the above

reason, his client was added in the proceedings before arbitrator and even after passing of award, a Writ Court passed direction upon the

arbitrator to serve the copy of the award upon his client. Mr. Banerjee, thus, contends that the appeal is very much maintainable at the instance of

his client.

6. In view of the aforesaid preliminary objection raised by Mr. Mitra, we have decided to take up the hearing of this appeal on the ground of

maintainability alone.

7. Therefore, the only question that arises for determination at this stage is whether this appeal is maintainable at the instance of the appellant who

had been given the property by the State Government by executing an agreement in terms of Section 6 of the Act after the requisition of the

premises in question.

8. To appreciate the aforesaid question, it will be profitable to refer to the following provisions of the Act and the rules framed under the Act.

Section 2(d)

Persons interested"" means any person claiming an interest in compensation payable on account of requisition of any premises under this Act.

Section 6. Disposal of premises after requisition.--When any premises have been requisitioned under Sub-section (1) of Section 3, the State

Government may use or deal with them, for such public purpose and in such manner as may appear to it to be expedient.

Section 7. Power to evict from requisitioned premises for breach of terms of tenancy.--(1) Notwithstanding anything contained in any other law for

the time being in force, where any person in occupation of any requisitioned premises--

(a) uses the premises or allows the premises to be used wrongfully or in such manner as, in the opinion of the Collector, deteriorates or is likely to

deteriorate the condition of the premises materially; or

(b) sublets without due authority the whole or any part of the premises; or

(c) fails or neglects to pay the rent or other sum payable by him for the occupation of the premises or for the use of any furniture therein; or

(d) otherwise acts in contravention of any of the terms, express or implied, of his tenancy or other like relationship created by the State

Government in respect of the premises

the Collector may--

(i) by notice served in the prescribed manner order such person or any other person found in occupation of the premises to vacate the premises

within fourteen days of the service of the notice; and

(a) recover as a public demand, the rent or other sum is hereby declared to be a public demand, without prejudice to any other mode of recovery

that may lie therefor.

(2) Action may be taken under this section even if any proceedings for possession are pending in respect of the premises and upon such action

being taken, the said proceedings shall forthwith be vacated.

Section 11. Procedure for fixing compensation.--(1) Where any premises are requisitioned under this Act, there shall be paid to all persons

interested compensation the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, namely :

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the State Government shall appoint a District Judge or an Additional District Judge as arbitrator;

(c) the State Government may, in any particular case, nominate a person having expert knowledge as to the nature of the premises requisitioned, to

assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;

(d) at the commencement of the proceedings before the arbitrator, the State Government and the person to be compensated shall state what in

their respective opinions is a fair amount of compensation;

(e) the Arbitrator shall, in determining the amount of compensation to be awarded to the landlord, have regard to the matters referred to in Clauses

(a), (b) and (c) of Section 12:

Provided that notwithstanding anything contained in Section 12 --

(1) in the case of an entire premises which was constructed after the commencement of the West Bengal Premises Requisition and Control

(Temporary Provisions) (Second Amendment) Act, 1963, the amount payable annually shall not exceed 6% per cent of the sum total of the cost of

construction of such premises and the market price of the land on the date of commencement of construction, together with one-half of the total

amount of municipal rates and taxes payable annually in respect of such premises;

(2) in other cases, the amount payable shall not exceed--

(i) where the premises were let out on rent for a continuous period of not less than six months and ending within six months before being

requisitioned, such rent by more than ten per cent, or

(ii) where the premises were not so let out, such rent as would be reasonable having regard to the situation, locality and condition of the premises

and the amenities provided therein and where there are similar premises in the locality, having regard also to the rent payable in respect of such

premises.

(f) an appeal shall lie to the High Court against an award of an arbitrator;

(g) save as provided in this section and in any rules made under this Act, nothing in any law for the time being in force relating to arbitration, shall

apply to arbitrations under this section.

(2) Compensation shall also be paid in respect of any damage done to the premises during the period of requisition other than what may have been

sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in

accordance with such agreement; where no such agreement can be reached, the matter shall be referred to the arbitrator.

Section 24. Power to make rules.--(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters,

namely--

(a) the manner of service of the orders referred to in Sub-sections (2) and (3) of Section 3,

(b) the form and manner of service of notice referred to in Section 4,

(c) the form and manner of service of notice referred to in Sub-section (1) of Section 7,

(d) the procedure to be followed in arbitrations and appeals u/s 11, the period within which such appeals are to be filed, the principles to be

followed in apportioning the costs of proceedings before the arbitrator send on appeal and the fees to be paid to experts and assessors appointed

under that section,

(e) * * * * *

(f) * * * * *

Rule 12. The Arbitrator shall have the like powers and shall follow the like procedure as the Court has and follows in the exercise of its ordinary

original civil jurisdiction under the Code of Civil Procedure, 1908.

Rule 13. When the Arbitrator has made his award, he shall sign it and shall give notice in writing of the making and signing thereof to the parties to

the reference. He shall also send to the Collector as well as to the person or persons interested a copy of the award with a note appended thereto

setting forth the grounds on which the award is based and shall also forward to the Collector the awards in original with the records of the

proceedings.

Rule 15. Any appeal against an award of the Arbitrator shall be preferred within six weeks from the date of receipt by the Collector or by the

party by whom the appeal is preferred of the copy of the award sent under Rule 13 :

Provided that any such appeal be admitted even if preferred after the said period of six weeks when the appellant satisfies the High Court that he

had sufficient cause for not preferring the appeal within the said period.

Rule 16. An award of the Arbitrator shall be enforceable in the same manner and to the same extent as a decree of the Civil Court and the

Arbitrator shall be deemed to be a Court.

9. After hearing the learned Counsel for the parties and after going through the aforesaid provisions contained in the Act and the rules framed

thereunder, we find that once a property is requisitioned under the Act, the compensation to person interested may be determined either by

agreement between the parties and if no such agreement can be reached by appointment of arbitrator as contained in Section 11(1)(b) of the Act.

The ultimate award that shall be passed by the arbitrator is appealable to High Court in terms of Section 11(1)(f) of the Act.

10. The arbitrator while passing the award shall have like power and shall also follow the procedure as the Court follows in exercise of its ordinary

original civil jurisdiction under the CPC and the award of the arbitrator shall be enforced in the same manner and to the same extent as a decree of

the Civil Court. Rule 13 enjoins a duty upon the arbitrator to give notice in writing of making and signing award to the parties to reference. He is

under further obligation to send the award to the Collector and a copy of the award to the person or persons interested with a note appended

thereto setting forth the grounds on which the award is based and shall also forward to the Collector the awards in original with the records of the

proceedings to the Collector.

11. Rule 14 prescribes the period of limitation for preferring of appeal before this Court and limitation runs from the date of receipt of the award by

Collector or by the party by whom the appeal will be preferred. Such appeal is to be preferred within six weeks from the receipt of such copy of

the award.

12. It is, therefore, clear that parties to reference and the person or persons interested in the award are really entitled to prefer appeal. It is

needless to mention that the State Government and the person interested in the compensation payable on account of requisition are necessary

parties to reference because after the property is requisitioned the State Government may pay compensation to the persons interested either by

agreement and if no agreement is reached, by way of reference to arbitrator and as such, in the proceedings before arbitrator the persons claiming

interest in compensation are really the parties and those persons are also the persons interested. However, the State Government is also a

necessary party to the proceedings and interested in the award because it is the State Government which is required to pay the compensation.

13. Ultimately, the award is passed against the State Government asking it to pay the awarded amount to the persons interested in claiming

compensation. Therefore, such award can be challenged either by the State Government being dissatisfied with the exorbitance of the amount of

compensation or by the persons claiming interest in compensation if according to them the amount awarded is inadequate and the same should be

enhanced. The appellant in this case cannot be said to be party to arbitration or a person interested in the compensation because the appellant has

acquired interest in the requisitioned land by virtue of post-requisition dealings between the State Government and the appellant in terms of Section

6 of the Act. Therefore, merely because the State Government after requisitioning the property has given the property to the appellant by virtue of

an agreement, such fact cannot confer any right upon the appellant either to be a party to arbitration proceedings or to prefer appeal against the

award. According to Section 6 of the Act, the State Government may use or deal with property requisitioned for such public purpose and in such

manner as may appear to it to be expedient. Therefore, the State Government after requisition can give the property for any public purpose to any

person even at free of cost or at a consideration higher than the amount that would be awarded by arbitrator as it thinks expedient. Such person

acquiring interest in the property in terms of Section 6, therefore, cannot have any right of participation in the arbitration proceedings unless such

right is recognised by any of the provisions contained in the Act. Mr. Banerjee in this connection placed strong reliance upon the decision of the

Supreme Court in the case of U.P. Awasthi Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., where a Constitutional

Bench of the Supreme Court upheld the right of local authority and company to prefer appeal against the compensation awarded on reference by

Court under the Land Acquisition Act, 1894. By referring to the aforesaid decision, Mr. Banerjee contends that the definition of "person

interested" appearing in the Land Acquisition Act is similar to the one appearing in the Act and as such, the phrase "person interested", appearing

in the Act, should be given a liberal construction by following the aforesaid decision.

14. After going through the said decision, we find that definition of person interested" appearing in the Land Acquisition Act is an "inclusive"

definition whereas in Section 2(d) of the Act the person interested "means" any person claiming an interest in compensation payable on account of

requisition of premises under this Act. At this juncture it will be useful to refer to the decision of the Supreme Court in the case of P. Kasilingam

and others Vs. P.S.G. College of Technology and others, where the Apex Court in clear terms held that the use of the word "means" indicates that

the definition is hard and fast definition and no other meaning can be assigned to the expression than is put down in the definition whereas 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. We, therefore, find substance in the contention of Mr. Mitra

appearing on behalf of the claimant that the interpretation of the Supreme Court in the aforesaid case of U.P. Awas Evam Vikas Parishad v. Gyan

Devi, on the basis of inclusive definition of "person interested" cannot have any application to the fact of the present case where the said expression

has been defined not by way of inclusive definition but by given narrow meaning. Moreover, in the Land Acquisition Act, a specific chapter is there

providing acquisition of land for company and local authority and Section 50 Sub-section (2) of the Land Acquisition Act recognizes right of such

company and local authority to participate in proceedings and give evidence. However, in the statute we are concerned, no such right has been

conferred upon the person to whom the requisitioned property is given in terms of Section 6 presumably because such right accrues after

requisition and the grant in favour of the third party is for a consideration which is entirely at the discretion of the State Government and the State

Government may decide to give such land free of cost or at a higher amount than that has been awarded.

15. We, therefore, find substance in the contention of Mr. Mitra that unless a statute recognises any right of appeal in favour of a party such party

cannot get the right to prefer appeal. We further find that the Act or rules framed thereunder does not permit an award-holder to execute the

award against the persons to whom property has been given in terms of Section 6 of the Act. The award-holder under the Act can execute an

award only against the State Government and it is for the State Government to pay the amount. Therefore, the State Government alone can have

grievance against the excess amount of award and in case of inadequacy of award, the person interested can be aggrieved. Merely because the

State Government by a subsequent agreement has given the property to the appellant and on the basis of such agreement the appellant is required

to pay the amount of compensation that will be awarded by arbitrator, such fact cannot confer right of appeal upon the appellant unless the statute

also recognises such right. It is now settled position of law that appeal is a creature of statute and hence appeal can be filed only by persons

permitted by the statute and subject to statutory conditions. As pointed out by Supreme Court in the case of Northern Plastics Ltd. Vs. Hindustan

Photo Films Mfg. Co. Ltd. and Others, , locus standi of a party to file appeal against the order passed under a statute has to be determined under

the provisions of that statute and not on the analogy of the locus standi in public interest litigation under Article 32 or 226 of the Constitution of

India.

16. Therefore, we do not find any substance in the contentions of Mr. Banerjee that merely because by virtue of agreement between the State

Government and his client, his client is required to pay the awarded sum, such fact will enable his client to prefer appeal against the award when the

Act or the rules framed thereunder does not recognize any right of a person who has been subsequently given the property in terms of Section 6 in

the matter of fixation of compensation nor is such person liable to pay the awarded amount to the award-holder nor is the award-holder permitted

to proceed against such person for execution of the award. Merely because the arbitrator permitted the appellant to participate in the arbitration

proceedings without objection of the respondent, such fact cannot confer right upon the appellant to prefer any appeal when the relevant statute

has not recognised such right. Similarly, the fact that a Writ Court, in the past, directed the arbitrator to give a copy of the award to the appellant

will not confer such right. It may be mentioned here that in the said writ proceedings the respondent was not made a party and as such, the said

decision of the Writ Court cannot take away the right of the respondent to raise the objection against the maintainability of the appeal.

17. We, thus, find substance in the contention of Mr. Mitra that this appeal is not maintainable at the instance of appellant and we, thus, dismiss this

appeal on the aforesaid ground alone. We make it clear that we have not gone into other questions involved in the appeal and rejection of this

appeal will also not stand in the way of appellant in enforcing his right conferred u/s 7 or 8 of the Act before the appropriate forum.

18. The appeal is, thus, dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Rajendra Nath Sinha J.

19. I agree.