

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	RP Nos.655/18, 634/18, 635/18, 636/18, 637/18, 638/18, 639/18, 640/18, 641/18, 642/18, 643/18, 644/18, 645/18, 646/18, 647/18, 648/18, 649/18, 650/18, 651/18, 652/18, 653/18, 654/18, 656/18 & 657/18.
2	Parties Name	<u><i>M.P. Road Development Corporation</i></u> <u><i>Vs.</i></u> <u><i>Jagannath and others</i></u>
3	Date of Judgment	26/2/2020
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Ms. Mini Ravindran, learned counsel for the petitioner. Shri A.S. Garg, learned senior counsel with Shri Aditya Garg, learned counsel for respondent No.1. Shri Akash Sharma, learned counsel for the State.
8	Law laid down	In terms of Section 50(2) of the Land Acquisition Act, 1894 the local authority or company at whose cost or for whom the land is acquired, has right of hearing and adduce evidence for the purpose of determining the amount of compensation but such an authority or company has no right to seek reference under Section 18 of the Act.
9	Significant paragraph numbers	8 to 15

(PRAKASH SHRIVASTAVA)

J u d g e

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

RP No.655/2018

(M.P. Road Development Corporation Vs. Jagannath and others)

RP No.647/2018

(M.P. Road Development Corporation Vs. Geetabai and others)

RP No.646/2018

(M.P. Road Development Corporation Vs. Shyamlatabai and others)

RP No.645/2018

(M.P. Road Development Corporation Vs. Koushalyabai and others)

RP No.644/2018

(M.P. Road Development Corporation Vs. Anusuiyabai and others)

RP No.643/2018

(M.P. Road Development Corporation Vs. Mahesh and others)

RP No.642/2018

(M.P. Road Development Corporation Vs. Rekhabei and others)

RP No.641/2018

(M.P. Road Development Corporation Vs. Dule Khan and others)

RP No.640/2018

(M.P. Road Development Corporation Vs. Devkanyabai and others)

RP No.639/2018

(M.P. Road Development Corporation Vs. Sumitrabai and others)

RP No.657/2018

(M.P. Road Development Corporation Vs. Gyantibai and others)

RP No.656/2018

(M.P. Road Development Corporation Vs. Bhagwan Singh and others)

RP No.654/2018

(M.P. Road Development Corporation Vs. Rameshchandra and others)

RP No.653/2018

(M.P. Road Development Corporation Vs. Abdul Wahid and others)

RP No.652/2018

(M.P. Road Development Corporation Vs. Pannalal and others)

RP No.638/2018

(M.P. Road Development Corporation Vs. Mahesh and others)

RP No.651/2018

(M.P. Road Development Corporation Vs. Salagram and others)

RP No.650/2018

(M.P. Road Development Corporation Vs. Lokesh and others)

RP No.649/2018

(M.P. Road Development Corporation Vs. Geetabai and others)

RP No.648/2018

(M.P. Road Development Corporation Vs. Pawanbai and others)

RP No.634/2018

(M.P. Road Development Corporation Vs. Vandana and others)

RP No.635/2018

(M.P. Road Development Corporation Vs. Shakuntalabai and others)

RP No.636/2018

(M.P. Road Development Corporation Vs. Punibai and others)

RP No.637/2018

(M.P. Road Development Corporation Vs. Jinna Khan and others)

Ms. Mini Ravindran, learned counsel for the petitioner.

Shri A.S. Garg, learned senior counsel with Shri Aditya Garg,
learned counsel for respondent No.1.

Shri Akash Sharma, learned counsel for the State.

Whether approved for reporting :

ORDER

(Passed on 26/2/2020)

1/ This order will govern the disposal of RP Nos.634/18, 635/18, 636/18, 637/18, 638/18, 639/18, 640/18, 641/18, 642/18, 643/18, 644/18, 645/18, 646/18, 647/18,

648/18, 649/18, 650/18, 651/18, 652/18, 653/18, 654/18, 655/18, 656/18 & 657/18 since it is jointly submitted by counsel for the parties that all these review petitions involve the same issue on the identical fact situation.

2/ These petitions have been filed seeking review of the orders of this Court which have been passed in First Appeals filed under Section 54 of the Land Acquisition Act (for short "the Act") against the award of the Reference Court.

3/ For convenience the facts are taken from RP No.655/2018.

4/ By this petition the petitioner is seeking review of order dated 4.7.2017 passed in FA No.169/2016, whereby the appeal filed by the respondent-claimant under Section 54 of the Land Acquisition Act has been allowed and the compensation amount has been enhanced.

5/ The case of the review petitioner is that the land was acquired for the purpose of widening of road and the project was of MPRDC, therefore, all the expenditure for the said project is required to be undertaken by the review petitioner i.e. M.P. Road Development Corporation. Further case of the review petitioner is that the amount of compensation awarded by LAO was initially deposited by the review petitioner with the Collector but the same was seized in another matter, therefore, on request the review petitioner had issued the demand draft in favour of the land owners. The further case of the review petitioner is that though the petitioner is required to pay the compensation amount and the land has been acquired for construction and widening of road by the review petitioner, yet the review petitioner was not impleaded before the reference Court or before this Court in First Appeal,

therefore, a serious prejudice has been caused to it requiring review of the order of this Court and giving an opportunity to the petitioner.

6/ Learned counsel for the petitioner submits that since enhanced compensation amount is to be paid by the petitioner and the land is acquired for the benefit of the petitioner, therefore, the petitioner was a proper party before the reference Court and since it was not impleaded, therefore, the proceedings before the reference Court as also before this Court have been vitiated and now the matter is required to be remanded back to the reference Court for fresh adjudication after impleading the petitioner and giving an opportunity to it.

7/ Learned counsel for the respondents have opposed the petition by submitting that the petitioner is not entitled for hearing before the reference Court being a beneficiary and that in some of the appeals before this Court, award is passed in the Lok Adalat, therefore, the review petition will not lie.

8/ Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the petitioner is undisputedly the beneficiary of the acquisition. The construction and widening of the road is to be done by the review petitioner and it is liable to pay the enhanced compensation and the compensation determined by the Land Acquisition Officer has also been paid by the petitioner. The record further reflects that the petitioner was neither a party in the land acquisition proceedings or proceedings before the reference Court, nor the petitioner has been noticed at that stage. Section 50 of the Land Acquisition Act gives right of hearing to the local authority or company concerned at whose cost or for whom land is acquired and the only limitation is that the local authority or

company is not entitled to demand a reference under Section 18. Section 50 of the Land Acquisition Act, 1894 reads as under:-

“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 any 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 under section 18.”

9/ The issue relating to right of the local authority to participate at the stage of determination of compensation in the light of provisions contained in Section 50 of the Act has been settled by the Constitution Bench of the Supreme Court in the matter of **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi and others reported in (1995) 2 SCC 326**, it has been held that:-

“11. 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. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference court, can take recourse to any legal remedy. Before dealing with this question we would take note of the decisions of this Court have a bearing on the issue.”

10/ The view of the Constitution Bench is clear that the local authority for whom land is acquired, is entitled to participate in the proceedings before the Collector and the reference Court and such local authority is also entitled to a notice from the Collector and reference Court at the stage of determination of the amount of compensation. The Constitution Bench in the above judgment has further taken note of Section 50(2) of the Act and has held that:-

“20. 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 *Neelgangabai & Anr. v. State of Kamataka*. 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 under Section 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 under Section 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 *Neelgangabai* 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 malafides. 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. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the local authority has failed to appear inspite of service of notice the local authority can have no cause for grievance. Even in such a case it may be

permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by malafides or is perverse.”

11/ The Constitution Bench has culled out the right of the local authority in this regard as under:-

“24. To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not 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.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as

well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.”

12/ In the matter of **Neyvely Lignite Corporation Ltd. Vs. Special Tahsildar (Land Acquisition) Neyvely and others reported in (1995) 1 SCC 221** the Hon'ble Supreme Court has held that word “person interested” comprehends the local authority or company for whose benefit land is acquired. Hence it is a proper party, if not necessary party, therefore it has a right to participate in the reference proceedings under Section 18 or appeal under Section 54 of the Land Acquisition Act, as also got the right to file a writ petition before the High Court under Article 226 of the Constitution. It has been held that the limited right to lead evidence under Section 50(2) of the Act is available.

13/ In the matter of **Agra Development Authority Vs. Special Land Acquisition Officer and others reported in (2001) 2 SCC 646**, it has been held that where the land is acquired at the cost of the local development authority, then it is mandatory for the Land Acquisition Officer to issue notice to the said authority and give an opportunity to adduce evidence while determining the compensation amount.

14/ In the matter of **Kanak (Smt.) and another Vs. U.P. Avas Evam Vikas Parishad and others reported in (2003) 7 SCC 693** it has again been reiterated that local authority for whose benefit the land is acquired or who is responsible for making payment of compensation, is required to be given notice by the Collector as well as Reference Court while

determining compensation and the exceptions are that the authority should have knowledge of the proceedings or the authority has not suffered any prejudice on account of the failure to give notice. In the present case the authority had no knowledge of the reference proceedings or the appeal before this Court and that serious prejudice is caused to the petitioner because the compensation amount has been enhanced in these proceedings.

15/ In the matter of **NTPC Ltd. Vs. State of Bihar and others reported in (2004) 12 SCC 96** considering the nature of right of the authority on whose behalf land is acquired, it has been held that such authority has not only right to lead evidence but also has right to support the award made by the LAO by cross-examining the witnesses led by the claimants. In the matter of **Regional Medical Research Centre, Tribals Vs. Gokaran and others reported in (2004) 13 SCC 125** considering the meaning of “local authority or company” as mentioned in Section 50 of the Act, it has been held that the words include a statutory body on behalf of which land is acquired and it has further been held that such body should be impleaded and given notice in the proceedings before the reference Court. The Supreme Court in the matter of **Delhi Development Authority Vs. Bhola Nath Sharma and others reported in (2011) 2 SCC 54** while considering the Section 50(2) of the Act, has held that the object of the provision is to afford an opportunity to the local authority or company to participate in the proceedings for determination of compensation amount and to show that the claim made by the land owner for payment of compensation is legally untenable or unjustified, therefore, notice to the local authority is necessary.

In this judgment, the Hon'ble Supreme Court has set aside the order of the Division Bench of the High Court and had remanded the matter back to the reference Court for deciding the reference by giving fresh opportunity of hearing to the parties including opportunity to adduce evidence for the purpose of determining the amount of compensation.

16/ Having regard to the aforesaid position in law, I am of the opinion that the award passed by the reference court under Section 18 of the Act and the order passed by this Court in First Appeal, without giving any notice to the petitioner and without the knowledge of the petitioner, suffers from patent illegality and the same cannot be sustained.

17/ Learned counsel for the respondents based upon the judgment of the Supreme Court in the matter of **Bharvagi Construction and another Vs. Kothakapu Muthyam Reddy and others reported in AIR 2017 SC 4428** has advanced the argument that in some of the matters the award has been passed by the Lok Adaloat, therefore, review is not maintainable. But such an argument can not be accepted in view of the fact that judgment dated 4/7/2017 in FA No.169/2016 has been passed by the court on merit and Lok Adalat has passed the award based upon that judgment. Since the said judgment of this Court dated 4.7.2017 passed in FA No.169/2016 itself in this order has been found to be suffering from patent illegality, therefore, the award of the Lok Adalat based on that judgment cannot be sustained.

18/ Hence, the judgment dated 4.7.2017 passed in FA No.169/2016 and the awards of the Lok Adalat in the connected appeals are reviewed and recalled and the First Appeals are disposed off by setting aside the award of the Reference Court

and directing the reference Court to give an opportunity to the petitioner and all the concerned parties in terms of the observation made above and pass afresh award in accordance with law.

19/ Review petitions accordingly stand **allowed**.

20/ Signed order be kept in the file of RP No.655/18 and a copy thereof be placed in the file of connected RP Nos.634/18, 635/18, 636/18, 637/18, 638/18, 639/18, 640/18, 641/18, 642/18, 643/18, 644/18, 645/18, 646/18, 647/18, 648/18, 649/18, 650/18, 651/18, 652/18, 653/18, 654/18, 656/18 & 657/18.

(PRAKASH SHRIVASTAVA)
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