REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2671-2672 of 2016

WALCHANDNAGAR INDUSTRIES LTD. ... APPELLANT (S)

VERSUS

THE STATE OF MAHARASHTRA & ANR. ... RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

1. Challenging a common Judgment rendered by the High Court of Judicature at Bombay in two appeals, modifying the award of the Reference Court passed under Section 18 of the Land Acquisition Act,1894, the claimant-landowner has come up with

these civil appeals.

2. We have heard Mr. Gopal Sankaranarayanan, learned senior advocate appearing for the appellant; Mr. Sachin Patil, learned advocate appearing for the first respondent-State and Mr. Deepak Nargolkar, learned senior advocate appearing for the second respondent-beneficiary.

3. The appellant is a company incorporated under the Companies Act. It has established a township in a vast area measuring about 16000 acres of land, located 136 kms. away from Pune. The nearest railway station to the township is at Bhigwan, located 36 kms. away from Walchandnagar Township.

4. For the purpose of transporting sugarcane and other goods, the appellant had laid trolley lines covering a distance of 50 kms. inside its estate. The appellant has also set up a 36 km. narrow gauge trolley line from Walchandnagar to Bhigwan for transportation of heavy engineering goods.

5. In the year 1967, the Government of Maharashtra approved

the BHIMA (Ujjani) Irrigation Project. As part of the project, a 18 feet height dam across the Bhima River was proposed to be constructed at Ujjani about 1½ kms. upstream from Hingangaon bridge on Pune-Sholapur National Highway. Before undertaking the construction of the dam, a general survey was carried out, which revealed that a section of the trolley line may get submerged. Therefore, a spate of correspondence and personal discussions ensued between the officials of the Government and the representatives of the appellant for exploring the possibility of diverting the trolley line.

6. It is the case of the appellant that they wanted the Government to invoke the urgency clause for the acquisition of some other land for diverting the trolley line. But it is the case of the respondents that the appellant had by then abandoned transportation through trolley line and switched over to road transport.

7. Be that as it may, a notification under Section 4 of the Land Acquisition Act, 1894 was published on 26.10.1972. The proposal

included the land on which a section of the trolley line passed. The extent of land covered by the trolley line that was expected to be submerged was measured to be 6 hectares 7 ares. Since the total land acquired for the project, included the lands of the appellant, which were located in different villages, a series of awards were passed.

8. For our present purpose, it may be noted that the Land Acquisition Officer passed an award on 9.12.1981. The claim of the appellant in the Award Enquiry was not only for the market value of the land, but also for: ***(i)*** compensation for the loss; and ***(ii)*** compensation for the injurious affection due to the trolley line becoming obsolete. The claim of the appellant also included a claim for the loss sustained by the appellant on account of the unacquired portion being rendered useless.

9. By his Award dated 9.12.1981, the Land Acquisition Officer awarded :

(i) Rs.15,329 for the acquired portion of land;

(ii) Rs.39032.94 for embankments, rails, bullies, sleepers;

(iii) Rs.43,491.12 for C.D. works;

(iv) Rs.12,754.17 towards labour charges for removing rails and steel sleepers; and

(v) Rs.16,591.08 for solatium.

10. In effect, the Land Acquisition Officer awarded total compensation of Rs.1,27,198.31/- and rejected the claim of Rs.1,49,85,251/- for the unacquired portion.

11. Not satisfied with the award, the appellant sought a reference under Section 18 on 12.01.1982. It was referred to the District Court, Pune, which took the same on file as Land Acquisition Reference No.6 of 1982.

12. Before the Reference Court, the appellant claimed enhancement of compensation for the land acquired. In addition, the appellant also claimed compensation for severance and compensation for injurious affection. The claim under different heads was summarized by the Reference Court in paragraph 14 of its award and it is reproduced for easy appreciation as follows:-

SUMMARY OF CLAIM FOR COMPENSATION

I. Land in Acquisition in Kumbhargaon village

1	Lands acquired	50,325-00
2	Embankment	63,850-00
3	C.D. Works	68,200-00
4	Trees	360-00
		1,82,735-00
5	Solatium @ 15%	27,410-00
	Total	2,10,145-00

SEVERANCE AND INJURIOUS AFFECTION

II. SEVERANCE

A	Land	6,03,800-00
B	Diminution in value of lands in Walchandnagar Township	8,64,000-00
C	Embankment, C.D. Works and buildings	18,85,200-00
D	Trees	27,000-00
	Total	33,80,000-00

III. INJURIOUS AFFECTION

E	Rails Sleepers etc.	42,45,000-00
F	Girders (remove)	Nil
G	Telephone line	16,000-00
H	Rolling Stocks	22,17,600-00
I	Increase in transportation costs	80,07,180-00
J	Remodeling of Bhigwan Yard	4,72,100-00
K	Loss of earnings (profits)	35,62,000-00
L	Retrenchment compensation	1,00,000-00
	Total for injurious affection	1,86,19,700-00

Total for Severance and Injurious affection II + III
(Rs.33,80,000 + 1,86,19,700 = 2,19,99,700)

IV. TOTAL COMPENSATION

I	Land	2,10,145-00
II	Severance	33,80,000-00
III	Injurious Affection	1,86,19,700-00
	Total	Rs.2,22,09,845-00
IV	Less : Compensation as awarded by S.L.A.O No.1, Pune on 9th December 1981	1,27,198-00
V	Net amount of enhancement	2,20,82,647-00
VI	Interest on total compensation	

	from the date of possession to date of payment of compensation @ 4% per annum under Section 34 of L.A. Act is to be paid by Government to the Claimant	

13. Eventually by a Judgment dated 14.03.1990, the Reference Court, ***(i)*** enhanced the compensation for the acquired part of the land to Rs.55,893.23; and ***(ii)*** fixed an amount of Rs.80,09,725 as compensation on account of severance and injurious affection.

14. Aggrieved by such enhancement and fixation, the State of Maharashtra filed an appeal in First Appeal No.653 of 1991. Not satisfied with the quantum fixed, the appellant also filed an appeal in First Appeal No.709 of 1991. Both the appeals were disposed of by a Division Bench of the Bombay High Court by a Judgment dated 19.11.2008. By this Judgment the High Court awarded:

(i) a compensation of Rs.20,62,006/- towards severance (unacquired trolley line) payable with solatium at 30% working out to Rs.6,18,601.80, thus totaling to Rs.26,80,607.80;

(ii) a compensation of Rs.7,39,280/- for injurious affection, payable together with solatium at 30% working out to

Rs.2,21,784/-, thus, totaling to Rs.9,61,064/-; and

(iii) a compensation of Rs.1,23,231.25 towards acquired trolley line together with solatium at 30% working out to Rs.36,969.37, thus, totaling to Rs.1,60,200.62. The High Court also held that the claimant company (appellant) will be entitled to interest under Section 28 as well as 34, on the entire amount of compensation as well as solatium from March-1976 till the date of deposit.

15. It is against the aforesaid Judgment dated 19.11.2008 passed in First appeal Nos.653 and 709 of 1991 that the claimant (landowner) has come up with the above appeals. The State does not appear to have filed any appeal.

16. As observed by the High Court, the award of the Reference Court was in two parts. The first part dealt with the claim for compensation on account of severance and injurious affection in respect of the trolley line running across 28 kms. in the unacquired portion of the land measuring abut 60.38 hectares. The second part of the award was in respect of the trolley line spread over about 7 kms. in the area submerged in water. For a better understanding of the arithmetic, it will be useful to present in a

tabulation, the different heads of claim, the amount claimed by the appellant, the amount awarded by the Reference Court and the amount to which the compensation was reduced by the High Court:-

	Heads of claim	**Amount claimed by appellant**	**Amount awarded by Reference Court**	**Amount granted by High Court**
	Severance			
1	Land	6,03,800	1,50,950	1,50,950
2	Diminution in value	8,64,000	Nil	Nil
3	Embankments, C.D. Works etc.	18,85,200	20,16,019	19,11,056
4	Trees	27,000	Nil	Nil
	Injurious Affection			
1	Rails Sleepers etc.	48,45,000	31,21,816	6,08,942
2	Telephone Line	16,000	Nil	Nil
3	Rolling stocks	22,17,600	17,79,884	Nil
4	Increase in transportation costs	80,07,180	8,00,718	Nil
5	Remodelling of Bhigwan Yard	4,72,100	1,30,338	1,30,338
6	Loss of earnings (profits)	35,62,000	Nil	Nil
7	Retrenchment compensation	1,00,000	10,000	Nil

17. As could be seen from the above tabulation, the appellant suffered a huge set back before the High Court, mainly under three heads of claims, which relate to severance and injurious affection in respect of the trolley line running in the unacquired portion of land. These three items are ***(i)*** rails and sleepers; ***(ii)*** rolling stocks;

and ***(iii)*** increase in transportation cost. At the cost of repetition, we will once again present in a tabulation, the amount claimed by the appellant, the amount awarded by the Reference Court and the amount to which the award was reduced by the High Court under these three heads, so that we have a better focus.

Heads	**Amount claimed**	**Awarded by Reference Court**	**Awarded by High Court**
Rails & Sleepers	48,45,000	31,21,816	6,08,942
Rolling Stocks	22,17,600	17,79,884	Nil
Increase in transportation cost	80,07,180	8,00,718	Nil
Total	1,50,69,780	5,702,418	6,08,942

18. Insofar as rails and sleepers which became obsolete are concerned, the claim of the appellant was that they could not be sold as such, in view of the fact that the railways had switched over to broad gauge. Though the appellant had to spend huge money for the removal of the rails and sleepers, they had to be sold only as scrap. According to the appellant, the Government turned down the proposal for a new line and hence they were entitled to be compensated to the extent of the value of the rails and sleepers

which became obsolete.

19. The Reference Court found as a matter of fact that the entire track had become completely useless and that the rails and sleepers had to be sold only as scrap. Though the appellant examined a qualified valuer by name Shri Talim, as a witness to show the loss sustained by them, the Reference Court could not go entirely by his evidence, as he admitted to have no personal knowledge, but went by the information supplied by the appellant. The Reference Court found that the trolley line was laid in the year 1946 and the valuation was made as of the year 1976. The Reference Court, therefore, applied depreciation @ 35% and arrived at the figure of Rs.31,21,816.

20. The High Court set aside the compensation awarded in respect of the rails and sleepers in the unacquired portion of the land, but confirmed the compensation for the acquired portion of the land on the ground that the appellant did not take effective steps to lay an alternative trolley line. The High Court disbelieved

the case set up by the appellant that the Government was not responsive to their demand for invocation of the urgency clause to acquire the land needed for alternative trolley line. The High Court found, from the balance sheets that the appellant had not suffered any loss on account of being compelled to switch over to road transportation.

21. Insofar as rolling stock is concerned, the Reference Court accepted the evidence of Mr. Kamat, a qualified valuer examined as PW-13. The Reference Court took the life of locomotives to be 20 years and the life of wagons to be 35 years, on the basis of the guidelines issued by National Council of Applied Economic Research. After accepting the evidence of PW-13 that the estimated cost of the rolling stock would be Rs.48,49,618/-, the Reference Court applied an arithmetical formula with reference to the residual life and the total life of the locomotives and three wagons and arrived at the depreciated value as Rs.22,36,424.70. From this amount the Reference Court deducted the scrap value and arrived at the compensation of Rs.17,79,884/-.

22. However, the High Court rejected the report of Mr. Kamat (PW-13), on the ground that he started valuation only after the year 1983 and that his valuation was based on 1986 prices. The High Court also found that the appellant continued to use the rolling stocks for the trolley line to a length of 14 kms. till the year 1983 and that, therefore, the appellant was not entitled to any compensation on this count.

23. As regards "*increase in transportation cost*", the Reference Court found:

(i) that the appellant was forced to discontinue the most convenient and economical mode of transport;

(ii) that even if the appellant had resorted to an alternative route for the trolley line, the same would have been longer by 12 kms, warranting an expenditure of Rs.1.50 crores;

(iii) that the Government could not have invoked the urgency clause, for acquiring land for alternative trolley line, as the acquisition could not have been considered as one for public purpose but rather for the benefit of a company.

(iv) that the appellant was able to prove through credible

evidence that the cost of transporting 35,000 tones of goods p.a. increased from Rs.0.20 per km. to Rs.0.80 per km.

(v) that, therefore, the appellant should be compensated for the increase in transportation cost.

24. The Reference Court agreed with the appellant that the loss of earnings for the appellant, in this regard, was Rs.80,07,180/-, but awarded compensation only for one year as against the claim of the appellant for a period of 10 years. The Reference Court awarded a sum of Rs.8,00,718/-.

25. The High Court set aside the amount awarded by the Reference Court under this head on the ground that the appellant did not suffer any loss of profit on account of the increase in the transportation cost, as the same would have been passed on to the customers. The High Court observed that the balance sheets for the period 1972-78 did not show any loss. The High Court went by the presumption that transportation cost is always factored into the manufacturing cost of the goods.

26. In the light of the manner in which the High Court interfered

with the award of the Reference Court, it was contended by Mr. Gopal Sankaranarayanan, learned senior counsel for the appellant:

(i) that the appellant cannot be blamed for not finding an alternative route to lay the trolley line and for not insisting on the Government to invoke the urgency clause for the acquisition of some other land for laying trolley line, as the provisions of Section 17 could not have been invoked for the benefit of a company;

(ii) that in any case an alternative trolley line would have admittedly cost Rs.1.50 cores and the same would have been 12 kms. longer than the existing line, resulting in an increase in the operational cost;

(iii) that the appellant was able to prove by cogent evidence that the cost of transportation by road was higher;

(iv) that the High Court failed to note that the profit of the appellant went down from Rs.96.07 lakhs in 1975-76 to Rs.40.80 lakhs in 1976-77;

(v) that there was neither any pleading nor evidence to show that the transportation cost was passed on to the customers;

(vi) that the High Court failed to note that the acquisition of land on which a trolley line to a distance of 6 kms. passed, led to the investment on 28 kms. of trolley line

in the unacquired portion being rendered useless;

(vii) that about 3 diesel locomotives and over 100 wagons were rendered useless due to the acquisition;

(viii) that the High Court misread the evidence of PW-13 as though he took the price as of the year 1986;

(ix) that despite best efforts, the appellant could sell only some of the locomotives, on account of there being no market for them; and

(x) that, therefore, the High Court was completely in error in rejecting the claim of the appellant and also reducing the amount awarded by the Reference Court.

27. In response, it is contended by Mr. Deepak Nargolkar, that the appellant set up a bogey of a claim about the trolley line in the unacquired portion of land becoming redundant and that having admittedly switched over to road transportation way back in September 1972, the appellant was not entitled to claim any compensation for the purported increase in transportation cost. Placing reliance upon the decision of this Court in ***Wazir*** vs. ***State of Haryana***[1], it was contended by Mr. Deepak Nargolkar that the

1 (2019) 13 SCC 101

additional component of compensation in terms of clause "*thirdly*" under Section 23(1) of the Act is to be granted only when the value of the left over land is effectively diminished in terms of quality. Therefore, it is his contention that severance charges in cases of this nature cannot be allowed.

28. We have carefully considered the rival contentions. As the dispute now stands confined only to three heads of claims, namely, ***(i)*** rails and sleepers; ***(ii)*** rolling stocks; and ***(iii)*** increase in transportation cost, we shall deal with them item-wise.

Law on compensation for severance and injurious affection

29. Before we consider the aforesaid three heads of claim item-wise, it may be useful to take note of the legal principles on the basis of which these claims are to be tested.

30. Sections 23 and 24 of The Land Acquisition Act, 1894 provide two lists of matters respectively, namely ***(i)*** matters to be considered in determining compensation; and ***(ii)*** matters to be neglected in determining compensation. Section 23(1), which alone is relevant for our present purposes, is extracted as follows:-

"23. Matters to be considered in determining compensation- (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first,	the market-value of the land at the date of the publication of the notification under section 4, sub-section (1);
secondly,	the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;
thirdly,	the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
fourthly,	the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
fifthly,	in consequence of the acquisition of the land

	by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and
sixthly,	the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land."

31. In simple terms, the six items covered by Section 23(1), which are to be taken into consideration by the court in determining compensation, can be summarised as follows:-

(i) The market value of the land on the date of publication of notification under Section 4(1);

(ii) The damage to standing crops or trees, which are on the land at the time of the Collector taking possession;

(iii) The damage sustained by reason of severing such land from the unacquired land;

(iv) The damage sustained by reason of the acquisition injuriously affecting the other property, movable or immovable, in any other manner or the earnings, of the person interested;

(v) The reasonable expenses incurred by the person interested, in changing his residence or place of business, when he is compelled to do so in consequence of the acquisition;

(vi) The damage *bona fide* resulting from diminution of the profits of the land between the time of publication of the declaration under Section 6 and the time of the Collector's taking possession.

32. The points arising for determination in these appeals revolve around clauses "*thirdly*" and "*fourthly*" of Section 23(1). These clauses are referred to in common parlance as clauses concerning '*severance*' and '*injurious affection*' respectively.

33. But clauses "*thirdly*" and "*fourthly*" of Section 23(1) cannot be considered in isolation. They have to be read together with Section 49 which reads as follows:-

> **"49. Acquisition of part of house or building-.**
>
> (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:
>
> Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

> Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.
>
> In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.
>
> (2) if, in the case of any claim under section 23, subsection (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.
>
> (3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under section 11."

34. It may be noted that clause *thirdly* of Section 23(1) relates only to land, as it speaks only about the severance of the acquired land from the unacquired land and the damage sustained as a consequence. In contrast, clause *fourthly* of Section 23(1) deals with the damage sustained by the person interested, due to the injurious affection, ***(i)*** of his other movable property; ***(ii)*** of his other

immovable property; and ***(iii)*** of his earnings. In other words what is injuriously affected at the time of Collector's taking possession of the land, may either be the unacquired portion of the immovable property or other movable property or even the earnings of the person interested.

35. It may also be noted that the expression used in clause *fourthly* is "earnings", while the expression used in clause *sixthly* is "profits". But clause *sixthly* is confined only to diminution of the profits of the land between the time of publication of the declaration under Section 6 and the time of the Collector taking possession.

36. Coming to Section 49, it deals with two contingencies. They are, ***(i)*** cases where what is sought to be acquired is only a part of any house, manufactory or other building; and ***(ii)*** cases where a claim for compensation under the head 'severance' under clause *thirdly* of Section 23(1) arises.

37. In so far as the 1st contingency is concerned there is a bar under sub-section(1) of Section 49 for the acquisition of a part only

of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.

38. In so far as the 2nd contingency is concerned, there is a choice given to the appropriate Government to order the acquisition of the whole of the land, if the appropriate Government is of the opinion that the claim for severance compensation is un-reasonable or excessive.

39. The distinction between the scope of sub-section (1) and the scope of sub-section (2) of Section 49 was brought out by this Court in ***M/s Harsook Das Bal Kishan Das*** vs. ***The First Land Acquisition Collector and Others***[2] as follows:-

> **"12.** The object of Section 49(1) of the Act is to give to the owner the option whether he would like part to be acquired. The Government cannot take the other part under Section 49(1) of the Act unless the owner says so. Section 49(2) of the Act has nothing to do with Section 49(1) of the Act. Section 49(2) of the Act gives the option to the Government only where the claim under the third clause of Section 23(1) of the Act is excessive. Reference to the third clause of Section 23(1) of the Act makes it clear that the claim under the third clause of Section 23(1) is for severance. The Government in such a case of acquisition of the remaining portion of the land under Section 49(2) of

2 (1975) 2 SCC 256

> the Act saves the public exchequer money which otherwise will be the subject-matter of a claim for severance."

40. In the case on hand, the provisions of Section 49(1) have no application. This is due to the fact that the appellant never desired that the whole of the manufactory shall be acquired by the Government. In fact, the total extent of land owned by the appellant was about 16000 acres, on which a township had come up. Therefore, there was no occasion for the appellant to exercise any option invoking Section 49(1). In any case, the appellant actually requested the Government to acquire land from other people, to divert the trolley line. Therefore, Section 49(1) has no application to the case on hand.

41. Section 49(2) also may not have any application for the reason that the appropriate Government did not think fit to seek acquisition of the whole of the land on which the remaining portion of the trolley line existed, on the ground that the claim for severance compensation was un-reasonable or excessive. Therefore, it is enough for us to go back to clauses *thirdly* and

fourthly of Section 23(1) without the constraints of sub-section (1) or (2) of Section 49.

42. As we have indicated earlier, clause *thirdly* relates to the damage sustained by the person interested, by reason of severance of the acquired land from the unacquired land, at the time of Collector's taking possession of the land. In contrast, clause *fourthly* of Section 23(1) deals with the damage sustained by reason of the acquisition injuriously affecting, ***(i)*** the other movable property; ***(ii)*** the other immovable property; and/or ***(iii)*** the earnings of the person interested.

43. The claim of the appellant before the Reference Court under clauses *thirdly* and *fourthly* of Section 23(1), presented a mix-up, with some items overlapping with others. This can be seen from paragraph 22 of the award of the Reference Court, where the claim of the appellant is extracted by the Reference Court as follows:-

> "22. The main grievance of the Claimant Company is that the Special Land Acquisition Officer has not considered at all the Claimant' claim for damages suffered by the Claimant Company on account of severance and injurious affection. Although the opponent has acquired only 6 kilometers, i.e., about

20.74 Hectares of land under the trolley line, this acquisition has rendered the remaining portion of about 30 Kilometers, i.e., 60.38 Hectares of the land under the trolley line totally useless. In other words, the contention of the Claimant Company is that the acquisition of only 6 kilometers has not only deprived the Claimant Company of the use of the trolley line facility, but it has also rendered the remaining portion of the trolley line of 30 kilometers, i.e. 60.38 hectares of land, the rolling stock, three diesel engines, buildings, telephone line and all other items connected with the trolley line, such as, civil works, embankments, C.D. works, culverts, bridges, totally redundant and obsolete. The claim can be divided into two categories as follows:

i) Enhancement of compensation in respect of the acquired portion of the land; and
ii) The compensation for the damages suffered by the Claimant Company in respect of the unacquired portion of the trolley line on account of severance and injurious affection under the following head:

1) Unacquired portion of the land admeasuring about 60.38 hectars.
2) The entire railway track of 36 kilometers comprising of rails, sleepers, girders, etc.
3) Rolling stocks, various types of wagons, tankers etc.
4) Diesel Engines three;
5) Telephone line and telephone poles, trees, wells, etc. Embankments, C.D. works, Bridges, Culverts building, non-operation of nearly 30 kilometers; Diminution in the value of Walchandnagar Township, due to discontinuance of the trolley line facility which was hitherto available to the said Industrial Complex, the Additional cost of transport for switching over from trolley line transport to road transport, the cost of remodeling the yard at Bhigwan Station in order to suit the trans-shipment of loading

> and unloading by road transport; total retrenchment compensation for about 52 persons, specially trained and employed for the operation of trolley line, who had come to be absorbed by the Claimant Company on humanitarian grounds and loss of earnings."

44. The second category of claim indicated in paragraph 22 of the award of the Reference Court, extracted above, contains a mix of claims that may fall under clauses *thirdly, fourthly and sixthly* of section 23(1). But fortunately the rejection of some of those claims are not taken up now by the appellant. In the appeals on hand, the claim is restricted only to three items namely, ***(i)*** the value of rails and sleepers; ***(ii)*** the value of rolling stock; and ***(iii)*** increase in transportation costs. These items are covered only by clause *fourthly* of Section 23(1) and they do not fall under clause *thirdly*.

45. Even within clause *fourthly*, what we are concerned in these appeals is the injurious affection of, ***(i)*** movable property such as rails and sleepers and rolling stock; and ***(ii)*** the loss of earnings due to increase in transportation costs. But unfortunately what the appellant did was to claim a sum of Rs.80,07,180/- towards increase in transportation costs and a separate amount of

Rs.35,62,000/- towards loss of earnings. Even under the heading 'loss of earnings', what was claimed was actually loss of profits. The appellant did not realize that the diminution of profits fell under clause *sixthly* of Section 23(1) and the claim under this head is restricted to the time between the date of publication of the declaration under Section 6 and the time of Collector taking possession. Injurious affection to earnings is covered by clause *fourthly* and the statute has made a distinction between, ***(i)*** injurious affection to earnings; and ***(ii)*** diminution of the profits between the time of publication of the declaration under Section 6 and the time of taking possession.

46. The Reference Court rejected the claim for compensation of Rs.35,62,000/- towards loss of earnings, on the ground that it overlapped with the claim under the heading 'increase in transportation costs'. It is perhaps after realizing such overlapping of claim that the appellant has confined their claim in the present appeals only to injurious affection, ***(i)*** to rails and sleepers; ***(ii)*** to

rolling stock; and ***(iii)*** to earnings due to increase in transportation costs, all of which fall under clause *fourthly* of Section 23(1).

47. One of the earliest cases to be decided on the question of injurious affection, was a Division Bench decision of the Calcutta High Court in ***R.H. Wernickle and Ors.*** vs. ***The Secretary of the State for India***[3] . The said case arose out of the acquisition of land which included a tea estate. The purpose of the acquisition was the extension of the rifle range of the Cantonment in the Villages of Lebong and Pandan at Darjeeling. A claim for injurious affection was made by the owners of the tea estate on the ground that they were forced to stop work in the unacquired portion of the tea estate, during the time when firing was practiced in the rifle range. Dealing with the claim, Doss, J. opined, "*There can be no doubt that it is extremely unsafe to work on land situate behind the butts when firing is going on, and the consequent loss of time must inevitably increase the cost of cultivation*". Therefore, Doss, J., held that the owners of the tea estate were entitled to compensation for the injurious affection of the 8 acres of tea land behind the butts.

3 2 Ind.Cas 562

Expressing concurrence with the view of Doss, J., Richardson, J. observed: *" It is said that the rifle range will interfere with the working of 8 acres of land behind the butts and I think that there can be no doubt as to this. It will not be safe to put coolies on the land when the range is being used".* An argument was advanced by the Government that the contemplated injury was contingent and that it could arise only from the negligent use of the range and that the same would fall under the category of actionable nuisance. Rejecting the said argument, Richardson, J., opined: *"But it is not clear that the injury which the claimants contemplate will amount to an actionable nuisance. The Government will have the right to use the land as a rifle range and no doubt it may be presumed that it will be so used with the greatest care and circumspection. But even so, no prudent owner would put his coolies on the land behind the butts while firing was going on".*

48. In ***Balammal*** vs. ***State of Madras***[4], this Court was concerned with a land acquisition under the provisions of the

4 AIR 1968 SC 1425

Madras City Improvement Trust Act, Section 71 of which authorized the Board of Trustees to acquire land under the provisions of The Land Acquisition Act, 1894 with the previous sanction of the Government. When the dispute relating to determination of compensation ultimately landed up before this Court, the argument of one of the land owners was that a part of the compound of a cinema theatre was acquired compulsorily and that it deprived the owner of the land, of the facility of providing additional amenities to the patrons of the theatre and also of making constructions on the land expanding the business. The claim was pitched in the alternative on clauses *thirdly, fourthly* and *sixthly* of Section 23(1). While agreeing on principle about the entitlement of a person interested to compensation under these clauses, this Court rejected the claim in that case, on the ground that there was no evidence either to show any loss by reason of severance or to show that the remaining land was injuriously affected by reason of acquisition or to show that the earnings of the owners were affected.

49. Therefore, keeping in mind the above legal principles, let us now take up for consideration, the claim of the appellant in these appeals.

Rails and Sleepers

50. It was the claim of the appellant that Walchandnagar Township is situate at a distance of 36 kms. from Bhigwan Railway Station on the Central Railway line and that with a view to provide a direct and rapid connection from Walchandnagar to Bhigwan, the appellant had provided its own trolley line with a private telephone line, goods yard with transshipment siding and other facilities. The trolley line was laid in the year 1946. According to the appellant, 35,000 tonnes of material used to get transported through this trolley line which included heavy machinery. Part of the trolley line got submerged in the backwaters of Ujjani Dam and the remaining portion of the trolley line situate in the unacquired part of the land had become useless. According to the appellant, they had to spend Rs.1,90,000/- for the removal and transport of the material relating to trolley line. The proposal for acquisition of alternative

land to lay a new trolley line did not materialize due to various problems, not attributable to the appellant. In any case, the cost of such acquisition was estimated at Rs.1.5 crores even at that time. The rails and sleepers forming part of the trolley line to a length of 28 kms. had thus become useless. Therefore, the appellant claimed a sum of Rs.50,08,328/- towards compensation for rails and sleepers.

51. This claim was resisted by the respondents on the ground that the trolley line was laid in the year 1946 for the purpose of carrying material from the sugar industry and that the appellant started manufacturing heavy machinery only from 1956. The trolley line was actually a narrow gauge line, having a width of 2 feet 6 inches. Therefore, the respondents contended that no compensation was payable towards rails and sleepers, especially when the appellant had also claimed compensation towards increase in transportation costs for switching over from rail transport to road transport.

52. Before the Reference Court, the Chief Administrative Manager

of the appellant, who was a qualified Civil Engineer was examined as PW-1, and a retired Director of Town Planning was examined as PW-15. Both these witnesses referred to the quotations given by Hindustan Steels Limited, towards estimated cost of laying the trolley line. After allowing depreciation and the value for which the material was sold and after adjusting transportation cost, these witnesses estimated the cost of rails and sleepers at Rs.50,08,288/-.

53. Though the respondents examined one Shri Mahajan, who also produced independent calculations, the Reference Court rejected his evidence on the ground that it did not inspire confidence. Interestingly the Reference Court did two things, namely, ***(i)*** it agreed that the method or formula adopted by Shri Mahajan was proper and recognized by the standard authors and yet rejected his evidence; and ***(ii)*** it agreed with the submissions of the Government Pleader as to why the evidence of Shri Talim, retired Director of Town Planning should not be relied upon, but eventually held that the evidence of Shri Talim cannot

be discarded totally. Thereafter, the Reference Court proceeded to take the estimated cost of rails and sleepers at Rs.2,41,053/- per km., and applied a depreciation of 35% and arrived at the depreciated value at Rs.1,56,650/- per km. Applying this rate for the trolley line of a distance of 35 kms. and after deducting the actual scrap value received by the appellant, the Reference Court arrived at the compensation for rails and sleepers at Rs.31,21,816/-.

54. Both the appellant as well as the State Government were aggrieved by the compensation so fixed by the Reference Court and both of them were on appeal before the High Court. The High Court held that the appellant was not entitled to any compensation for rails and sleepers lying in the trolley line for a distance of 28 kms., since the appellant was at fault for not taking effective steps to lay alternative trolley line to a distance of 6 to 7 kms. which got submerged in the backwaters. The High Court held that in any case, the appellant did not suffer any loss, as was evident from the balance sheets placed on record upto the year 1978. The finding

recorded by the High Court in this regard may be usefully extracted as follows:-

> "In our opinion, the company cannot be granted compensation for rails and sleepers covering 28 kms. of the trolley line. In the earlier part of this judgment we have held that the company was at fault in not taking due steps to lay the alternative trolley line for 6 to 7 kms. area submerged in the backwater. It gave up this proposal by its own choice and the reasons put forward before the Reference Court were false and fabricated. Even otherwise the company did not suffer any loss after the trolley line was discontinued in 1976, as was evident from the balance–sheets placed on record upto the year 1978. The increase in transport cost i.e. road transportation by trucks was offset by increasing the manufacturing cost which is so obvious from the fact that the company did not incur any losses after it resorted to road transportation. The company could not have prayed for injurious affection on account of discontinuation of the trolley line and claimed compensation for rails and sleepers spread over 28 kms. of the trolley line. We do not find any justification that the company should be allowed to go with this compensation amount and have the double benefit. It would be a premium for its inaction for laying the alternative trolley line."

55. After rejecting the claim with regard to the rails and sleepers of the trolley line for a distance of 28 kms., on the basis of the reasons extracted above, the High Court proceeded to award compensation for the rails and sleepers in the trolley line to a distance of 7 kms. which got submerged in the backwaters. This compensation, payable for the rails and sleepers in the trolley line

to a distance of 7 kms. which got submerged in the backwaters, was worked out, by accepting the depreciated cost fixed by the Reference Court at Rs.1,56,650/- per km. For a distance of 7 kms., it worked out to Rs.10,96,550/-. From this amount the High Court deducted the scrap value of Rs.4,87,608/- and arrived at the compensation payable under this heading at Rs.6,08,942/-

56. But as rightly contended by Shri Gopal Sankaranarayanan, learned senior counsel for the appellant, the acquisition of land for laying alternative trolley line was not an easy task, especially when there were lot of land owners. The urgency clause under Section 17 of the Land Acquisition Act could not have been invoked, as the appellant is a company.

57. The fundamental flaw in the reasoning of the High Court is that the High Court presumed that it was enough if the land for relocating 7 kms. of trolley line was acquired. If trolley line to a distance of 7 kms., out of a total stretch of 35 kms. admittedly got submerged in the backwaters, the trolley line relating to the entire stretch would naturally become redundant. Railway line is not like

a roadway. Roads can take deviation easily, but not railway lines. Therefore, if land had to be acquired for relocating the trolley line, it should have been for the entire stretch of 35 kms. It is not possible to retain 28 kms. of trolley line and relocate the remaining 7 kms. stretch alone. Therefore, we are of the considered view that the High Court committed a gross error in reversing the finding of the Reference Court under this heading.

Rolling Stocks

58. The claim of the appellant was that due to the entire trolley line becoming useless, three diesel locomotives, about 100 four wheeler wagons, few 8 wheeler wagons and a one way bridge became redundant and that they are entitled to compensation towards the loss of value/utility of these rolling stocks. The appellant quantified the claim under this head at Rs.22,16,044/-.

59. This claim was resisted by the Government on the ground that the appellant was put on notice of the proposed acquisition way back in 1967 and that after showing inclination to lay an alternative trolley line at the initial stages, the appellant

abandoned the proposal in the year 1974 and that, therefore, the claim for compensation under this head was liable to be rejected.

60. The appellant examined an Industrial Consultant and a registered valuer by name Shri Kamat, in support of this claim. His report containing the valuation of the rolling stock was filed as Exhibit-93. This witness testified that before preparing the estimate, he obtained quotations from one Shahajhan Engineers and Suyog Electricals.

61. Though the respondents relied upon the evidence of the Executive Engineer, Mechanical Division, examined as DW-5, the Reference Court rejected his evidence on the ground that it was of no assistance. This witness had admitted that he never had any occasion to value any railway wagons or locomotives.

62. In the light of the oral and documentary evidence, the Reference Court came to the conclusion that the life of the locomotives can be taken as 20 years and the life of wagons can be taken as 35 years. Applying depreciation on a straight line formula, the Reference Court arrived at the depreciated value of

rolling stock as Rs.22,36,424.70/-. After deducting the scrap value of Rs.4,56,540/-, the Reference Court fixed the compensation payable for the rolling stock at Rs. 17,79,884.70/-.

63. The High Court, on re-appreciation of evidence found that the appellant company did not bring before the Court, the book value of the rolling stock. But the expert witness Shri Kamat examined as PW-13 admitted during cross-examination that as per the Asset Register maintained by the appellant relating to the year 1986, the value of the rolling stock was almost zero. By selling the rolling stock as scrap, the company had actually earned a sum of Rs.4,56,540/-. Moreover the High Court found from the evidence on record that within the company premises, the trolley line to a distance of 14 kms. was in operation till the year 1983. This was a clear indication that the rolling stock was used at least till the year 1983. Therefore, the High Court reversed the grant of compensation made by the Reference Court in respect of the rolling stock.

64. Though it is contended on behalf of the appellant that the

evidence of PW-13 (Shri Kamat) was misread by the High Court and that due to good maintenance, the life of the rolling stock had increased, we do not think that the view taken by the High Court was completely out of sync with the evidence on record. The High Court has actually extracted one portion of the evidence of Shri Kamat (PW-13). He has clearly admitted that though he inspected the Assets Register in 1986 before preparing the report he did not record in his report, the book value of the asset. He clearly stated *"it is possible that in book value, the assets might become zero value in the instant case."*

65. Therefore, no exception can be taken to the finding recorded by the High Court insofar as rolling stock is concerned.

Increase in transportation cost

66. In simple terms, the claim of the appellant was that the cost of transportation through trolley line was Rs.0.20 per km. per tonne and that the cost of transportation by road was Rs.0.80 per km. per tonne. Since a portion of the trolley line got submerged in the backwaters and as a consequence, the entire stretch of trolley

line became unusable, the company had to switch over to road transport, resulting in an increased cost of Rs.8,00,718/- per year. Applying a multiplier of 10, the appellant made a claim for Rs.80,07,180/- under this head.

67. The appellant examined the Chief Administrative Manager as PW-1, the Planning Manager as PW-3 and a person working as a clerk in the transport Section of the company as PW-6. The Chief Accountant of the company was examined as PW-7 and a person who was carrying on road transport business under the name and style of Purohit Road Lines was examined as PW-12.

68. The Reference Court accepted the evidence adduced on the side of the appellant and came to a conclusion that the appellant was transporting about 35,000 tonnes of goods per year through the trolley line at the cost of Rs.0.20 per tonne per km and that the cost of road transport for the same quantity of material was Rs.0.80 per km. per tonne. The Reference Court thus arrived at the increase in the cost of transportation per year at Rs.8,00,718/-.

However, the Reference Court rejected the claim of the appellant in this regard for a total period of 10 years, on the ground that there is no basis for allowing such a claim for a total period of 10 years. Therefore as against the claim of the appellant for a sum of Rs.80,07,180/- (increase in cost for 10 years), the Reference Court awarded only Rs.8,00,718/- (increase in cost for one year only).

69. The High Court reversed the finding of the Reference Court on the short ground that the appellant had not demonstrated to have suffered any loss of profits on account of the increase in the transportation cost and that even the balance-sheets for the years 1972 to 1978 did not disclose any loss of profit. Therefore, the High Court opined that the increase in transportation cost, even if any, would have been absorbed in the price charged to the customers and that there was no case for allowing compensation under this head even for one year, when the appellant had not suffered any loss of profit. In fact, the appellant had made a claim separately for a sum of Rs.35,62,000/- towards loss of profits, but the same was turned down by the Reference Court. Therefore, the High Court

held that the Reference Court could not have granted any compensation under this heading 'increase in transportation cost'.

70. The objections of the appellant to the finding of the High Court in this regard are two-fold namely, ***(i)*** that the profits actually went down from Rs.96.07 lakhs in 1975-76 to Rs.40.80 lakhs in 1976-77; and ***(ii)*** that without any evidence on record the High Court presumed that the increase in transportation cost was off-set and recovered from the buyers of the goods manufactured by the company.

71. Insofar as the first objection is concerned, we must point out at the outset that the Notification for acquisition under Section 4 was published in the Government Gazette on 26.10.1972. The declaration under Section 6 was published in the Government Gazette on 01.08.1974. Notices under Sections 9(1) and 9(2) were published in September-1974 and Feburary-1975. Though the exact date on which possession was taken is not mentioned by either of the parties, the appellant has stated in their synopsis that the Government took possession of the land in 1976.

72. The appellant has produced before us the copy of the balance-sheets and profit & loss account for the years 1975-76 and 1976-77. From these balance-sheets and profit & loss accounts, it is sought to be highlighted that the appellant made a profit of Rs.96.07 lakhs during the year 1975-76 and that the profit went down to Rs.40.83 lakhs during the year 1976-77.

73. If this claim of the appellant is taken to be true, it would mean that the appellant suffered a reduction in profit to the tune of about Rs.55,00,000/-in one year immediately after possession of the land was taken. The balance sheets and profit & loss accounts produced by the appellant before us are as on 30.09.1976 and 30.09.1977. Even according to the appellant, the reduction in the profit to the extent of nearly Rs.55,00,000/- was not wholly attributable to the increase in transportation cost. The appellant claimed only a sum of Rs.8,00,718/- per year towards increase in transportation cost. This constitutes only 15% of the total amount of reduction in profits. It is seen from the profit & loss account for the year ended 30.09.1977 that the sales turn over itself had come

down from Rs.22.09 crores to Rs.18.17 crores. Even the raw material consumed had come down from 13.47 crores to Rs.9.32 crores. There had also been a substantial down slide in sub-contract and process charges. Therefore, the contention of the appellant that the profits went down, may be a point in an answer to the adverse inference drawn by the High Court with regard to profits. But it cannot be used in support of the appellant's case that the increase in the transportation cost accounted at least in part to a reduced margin of profit.

74. The impact of the increase in transportation cost, upon the profit margin of a seller of goods, would depend upon the terms and conditions of the contract. It may also vary from sea transport to rail transport to road transport to air transport. Though in shipping contracts there are standard covenants such as FOB (Free on Board), CIF (Cost, Insurance and Freight) etc., there are no such standard covenants in rail and road contracts. In any case, the trolley line of the appellant covered only a distance of 35 kms upto Bhigwan. Delivery of material had to be effected by the

appellant to its customers through some method of transport from Bhigwan. Nothing is on record to show that the goods were always dispatched to all customers through goods carriage railway line of the Indian Railways beyond Bhigwan. In the absence of any evidence to show that the increase in the transportation cost due to the submerging of a part of the trolley line, had always to be absorbed only by the appellant, but could not have been passed on to its customers due to specific terms and conditions of contract, the Reference Court could not have accepted a claim in this regard.

75. Moreover there was a finding of fact in the Award passed on 09.12.1981 which was taken note of by the High Court. The relevant portion of the Award reads as follows:

> "Further as per local enquiry it is told that the Trolley line was constructed years back mainly for bringing heavy machinery at Walchandnagar**.** After this purpose was served, they were using it for movement of goods for some time. The process of moving the goods on the Trolley line became uneconomical. So they resorted to road and truck traffic which was quick and possibly economical. Thus the whole Trolley line was in disuse being uneconomical on the relevant date i.e. 27-9-72. In these circumstances the claim for severance and injurious affection has been rejected."

76. Therefore, the decision of the High Court with regard to the claim for compensation towards increase in transportation cost appears to be reasonable and hence cannot be interfered with.

CONCLUSION

77. The upshot of the above discussion is that the refusal of the High Court to award any compensation for the injurious affection to one set of movable property, namely, rolling stock cannot be found fault with, for the reasons stated above. Similarly, the refusal of the High Court to award any compensation for increase

in transportation cost, falling under the category of "*injurious affection to earnings*" cannot also be faulted, for the reasons indicated separately. However, the refusal of the High Court to grant compensation for the injurious affection sustained by the appellant to one set of movable property, namely, rails and sleepers forming the trolley line for a distance of 28 kms., is clearly unsustainable especially when the grant of compensation for the injurious affection to rails and sleepers to a stretch of 7 kms. submerged in the backwaters, has been sustained by the High Court. In fact, the State has not come up on appeal against the grant of compensation for the injurious affection to the trolley line to a distance of 7 kms which got submerged in back waters. That the remaining portion of the trolley line to a distance of 28 kms has been rendered useless after the acquisition, is not in dispute.

78. A question may arise as to whether the reasoning given by us for rejecting the claim for loss of earnings in the form of increase in transportation costs, will not apply *ipso facto* to the claim for compensation for the rails and sleepers also, since the appellant

had switched over to road transport in the year 1972 itself. But our answer would be that clause *fourthly* of Section 23(1), uses a significant phrase viz., ***"injuriously affecting his other property, movable or immovable, in any other manner, or his earnings".*** Therefore, injurious affection to property, in any other manner, may stand on a different footing from injurious affection to earnings. While there is no evidence on record to connect the drop in the level of profits from 1975-76 to 1976-77, with the increase in transportation costs, there is acceptable evidence to show that movable property became useless after the acquisition. Therefore, both stand on different footings.

79. Therefore, the appeals are partly allowed, setting aside that portion of the findings and conclusions reached by the High Court in the impugned judgment (para 22), whereby the award of the Reference Court relating to compensation for injurious affection to rails and sleepers, was reversed by the High Court. As a consequence, the award of the Reference Court granting a sum of Rs.31,21,860/- towards compensation for rails and sleepers shall

stand restored. In respect of all other claims, the impugned judgment is not interfered with.

80. Before parting we are obliged to bring one important fact on record. It appears that at the time of filing of the First Appeal before the High Court of Judicature at Bombay, the respondents deposited on 17.07.1992, the award amount of Rs.2,72,25,680/-. By virtue of an order passed subsequently, the appellant withdrew the said amount apparently after furnishing bank guarantee. But by the impugned judgment dated 19.11.2008, the High Court of Bombay allowed the appeal of the respondents and reduced the award amount. When the Special Leave Petitions out of which the present appeals arise, came up for admission, this Court passed an order dated 16.03.2009 which reads as follows:-

> "Issue notice.
> If the petitioner has furnished any bank guarantee in regard to the amount already drawn, there shall be interim stay of enforcement of the guarantee by the respondent subject to the petitioner extending validity of the bank guarantee till disposal of this matter."

We hope that the bank guarantee is kept alive as per the above order of this Court dated 16.03.2009. Now that the judgment of

the Bombay High Court is modified by us, the appellant will be entitled to retain so much of the amount as they would be entitled to, by virtue of this judgment and the appellant shall pay the respondents the excess amount, within four weeks. In case the bank guarantee furnished by the appellant is alive, the Land Acquisition Officer may prepare fresh calculations and enforce the bank guarantee only to the extent of disallowed portion. There will be no order to costs.

.....J.
(Hemant Gupta)

.....J.
(V. Ramasubramanian)

New Delhi
February 4, 2022