
(1977) 03 KAR CK 0009
In the Karnataka High Court
Case No : CRP. 993 of 1976

Academy of General Education, Manipal

APPELLANT

Vs

Venkataraj S.

RESPONDENT

Date of Decision : 30-03-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1977) 2 KarLJ 491

Hon'ble Judges : Venkataswami, J

Judgement

1. This Civil Revision petition under S. 115 of the Code of Civil Procedure arises out of and is directed against the order dated 15.12.1975 on I.A. 4, in OS.No. 24 of 1973 on the file of the Court of the Principal Munsiff at Udupi rejecting petitioner's claim to be impleaded as a party-defendant in the said suit.

2. The facts, in so far as they are material for the disposal of this Civil Revision Petition, are the following:

Certain lands situate in S.No. 415/1 of Shivalli village, Udupi Taluk in the District of South Kanara, were, amongst other lands, the subject matter of a notification dated 30.8.1962 issued under sub-section (1) of S. 4 of the Land Acquisition Act followed by the final notification dated 18-4-65 under S. 6 of the said Act, the proposed acquisition having been stated to be for the benefit of the petitioner viz., the Academy of General Education, Manipal. The plaintiff in the suit-a certain S. Venkatraj-claiming to be the owner of the said property has challenged the legality of these notifications. On 30th March 1974 the petitioner filed the impleading application, I.A. 4 contending that the proposed acquisition was for its benefit, that in pursuance of the agreement in this behalf certain sums of money had come to be deposited by the petitioner with Govt. that in pursuance of the said proceedings of acquisition certain lands belonging to other owners had already been put in its possession and that petitioner had such direct and substantial interest in the subject matter of the suit as entitled it to participate and contest the proceedings as a party-defendant. On 15.12.1975 the learned

Munsiff dismissed the application holding that the petitioner in I.A. No. 4 was neither a necessary party nor a proper party and that its impleading was not necessary for an effectual adjudication of the dispute involved in the suit. The correctness of this view is challenged in this petition.

3. Sri Tukaram S. Pai, learned Counsel for the petitioner very strenuously contended that the undisputed fact that the acquisition pursuant to the impugned notifications was for the benefit of petitioner and the further fact that the petitioner had deposited monies towards the cost of acquisition with the Govt. in pursuance of an agreement in that behalf would clearly show that the petitioner had a direct and substantial interest in the subject matter of the litigation and that accordingly it was entitled to be impleaded to the suit. He further stated that subsequent to the institution of the suit an award had also come to be made in the proceedings for acquisition and that circumstance, according to Sri Pai, would make the position a fortiori.

4. The short question that falls for determination in this petition is, therefore, whether petitioner is a necessary or a proper party to the suit?

5. A necessary party is one in whose absence the court cannot pass an effective decree at all. Proper party is one whose presence before the Court is necessary to ensure that all matters in dispute are effectually or completely determined. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the ensuing result and the question to be settled in the suit, therefore must be one which cannot be effectually settled unless he is a party. In *Razia Begum v. Sahebzadi Anwar Begum*, AIR. 1958 SC. 886. the Supreme Court while considering power of the Court to implead parties to an action under Rule 10 of Order I of Code of Civil Procedure held that the Courts in India have not treated the matter of addition of parties as raising any question of initial jurisdiction of the Courts, though, however, it may, sometimes, involve a question of jurisdiction in the limited sense in which it is used in S. 115 of the Code of Civil Procedure. Adverting to the criteria guiding the impleading of a party to an action, the Supreme Court observed:

"There cannot be the least doubt that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it raises questions relating to moveable or immoveable property."

Formulating what emerges from the principles guiding the matter the Supreme Court further laid down:

"(1) That the question of addition of parties under R.10 of Or. 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the Court, in contradistinction to its inherent jurisdiction or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of

the Code.

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject matter of the litigation."

6. The question, therefore, in the present case is whether the relief which the plaintiff asked in the suit directly affects the petitioner in the enjoyment of his legal rights. This question indeed under somewhat similar circumstances, was considered by the Gujarat High Court in the case of Mahuva Municipality v. Mehta Kiritkamar Umedchand, AIR. 1973 Guj. 97. After a reference to the several authorities on the matter, a Bench of the Gujarat High Court was of the view that the body for whose benefit and at whose instance proceedings for acquisition of land were embarked upon could not be said to have any interest in the subject matter of the suit in which the legality of the acquisition is challenged by the owners of the property. It further held that merely because the body-Municipality of Mahuva, for whose benefit the proceedings for acquisition in that case were initiated-had to pay the cost to Govt in case the acquisition proceedings are held to be invalid, because the Govt in pursuance of an agreement between the Govt on the one hand and the Municipality on the other was entitled to recover those costs from the Municipality, it could not be said that the Municipality had an interest in the subject matter of the suit and that consequently the Municipality could not even be held to be a proper party to the suit. The Gujarat High Court placed reliance upon an unreported decision of the Supreme Court in Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel, Civ. App. 1716/67 dt.8-1-70. wherein certain lands belonging to the first respondent in that appeal were notified for acquisition under S. 4 of the Land Acquisition Act of Bombay. The area in which the lands were situated having thereafter been allotted to the State of Gujarat, the Divl Commr of the State of Gujarat had issued a notification under S. 6 of the Act on 2nd May, 1961. These notifications were challenged. Against the decision of the High Court the Municipal Corporation of the City of Ahmedabad, which was the fourth respondent in that petition, appealed to the Supreme Court. A preliminary objection was taken that the Municipal Corporation could not be said to be a person aggrieved by the order. That contention was upheld by the Supreme Court observing:

"The Municipal Corporation was impleaded as the fourth respondent before the High Court but no relief was claimed against the Municipal Corporation. The property, it is true, was notified for acquisition by the State Govt for the use of the Municipal Corporation after it was acquired by the Govt, but that, in our judgment, did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court allowing the petition. Substantially the grounds on which the petition was filed were that the Notifications were invalid on account of diverse reasons. Some of these reasons have not been upheld:but all those grounds related to the validity of the Notifications issued by the Government of Bombay and the Govt of Gujarat. Not

even an order of costs has been passed against the Municipal Corporation of the City of Ahmedabad. We fail to see what interest the Municipal Corporation has, which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the first respondent." (emphasis supplied).

These observations of the Supreme Court, clearly show that in a matter like the present one the entity for whose benefit the acquisition was proposed cannot be said to have a direct legal interest in the proceedings where the acquisition proceedings are challenged.

7. Sri Tukaram S. Pai, learned Counsel for the petitioner however, urged that the facts of the case in Mahuva Municipality, AIR. 1973 Guj. 97. were clearly distinguishable from the facts of the present case. In the present case, according to Sri Pai the petitioner's position was not the same as that of Mahuva Municipality obtaining in that case. According to him it was shown in the present case that the acquiring body i.e. the Academy of General Education-the petitioner herein-had deposited the necessary funds and, indeed, in pursuance of the notification which concerned not only the property of the plaintiff in the suit but of several others, petitioner had, in fact, been put in possession of some of the properties so notified. These circumstances, according to Sri Pai, impart a different complexion to a question which justifies the view the petitioner has a direct legal interest in the matter so as to sustain a prayer for being impleaded. He urged that the decision in The Khurshed Bagh Co-op Housing Society Ltd., v. Smt. Satya Devi, AIR. 1971 All. 428 which must be held to have laid down the correct principle is attracted to the present case. It is true that the facts in Khurshed Bagh Co-op Housing Society, AIR. 1971 All. 428. were similar to the facts of the present case and that the High Court of Allahabad, in holding in favour of the locus standi of the appellant observed thus:

"In the instant case the land is being acquired for the appellant and, as stated earlier, the appellant has already entered into an agreement with the State Govt and has deposited the requisite amount in that regard. There can, therefore, be no doubt that the appellant-society is interested in the acquisition of the land and as such a proper party within the meaning of Order 1, Rule 10, sub-clause (2) inasmuch as its presence before the Court is necessary in order to enable it to effectually and completely adjudicate upon and settle all the questions involved in the proceeding."

8. However, as observed by the Bench of the Gujarat High Court the above passage does not disclose the reasons for the conclusion. The view of the Allahabad High Court does not appear to me to be consistent and reconcilable with the principles and guide-lines laid down by the Supreme Court in Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel, Civ. App. 1716/67 dt.8-1-70. With great respect, I am unable to accept the view of the Allahabad High Court in Khurshed Bagh Co-op Housing Society, AIR. 1971 All. 428 as laying down the correct principle in this behalf.

Respectfully agreeing with the view taken by the Gujarat High Court in Mahuva Municipality's case, AIR. 1973 Guj. 97. I hold that the petitioner in the present case cannot be considered to be either a proper party much less a necessary one in the proceedings before the Court below. According this Civil Revision Petition fails and is dismissed. But in the circumstances there will be no order as to costs.