

(2004) 06 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 6937 of 2004

Basanagouda and Another	Vs	APPELLANT
The Social Economic Cultural Association and Another		RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 17

Citation : (2004) ILR (Kar) 2918 : (2004) 4 KarLJ 632 : (2004) 3 KCCR 298 SN

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : S.K. Venkata Reddy, for the Appellant; K.N. Patil, for C/R-1 and Kempanna, HCGP for R-2, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—In this petition the petitioners are assailing the order of the reference Court viz. Addi. Civil Judge (Sr. Dn.), Bijapur, in rejecting the I.A.I filed under Order VI Rule 17 CPC in LAC. No. 189/91 by order dated 17.1.04.

2. It appears that the petitioners are the owners of the land in S.No. 424/1 measuring 8.6-1/2 acres situate at Mahal Baghayath of Bijapur District. This land is shown to have been acquired at the instance of the 1st respondent. Thereafter, award has been passed by the Land Acquisition Officer (for short "the L.A.O.") Petitioners being not satisfied with the quantum of compensation awarded by the LAO sought for reference. Accordingly, the LAO referred the applications to the Civil Court as per the provisions of the Land Acquisition Act (for short "the Act"). The reference order is said to be of 1991. During the pendency of reference application for enquiry in the year 1998, I.A.I is filed by the petitioners herein before the Civil Court seeking for amendment in the reference application and the same was allowed by the Civil Court against which the respondent No. 1 being the beneficiary approached this Court in W.P.33131/03 and this Court looking into the nature of the order passed by the reference Court observed that whenever applications are filed and contested, Courts are required to pass

reasoned orders, so that either in an appeal or a revision, the concerned authorities would be able to appreciate the reasons and pass necessary orders. Since the same had not been done and as the order was not a speaking order, this Court felt that it required to be set aside and accordingly, passed an order on 30.3.98 setting aside the order of the Civil Judge (Sr. Dn.), Bijapur.

3. It is needless to refer to the said order of the Civil Judge in detail. However, for the purpose of convenience, the operative portion of the order passed by the Civil Judge is reproduced here which is as under:

"Heard the arguments on I.A.I. perused the documents and affidavit by the claimant. IAI is allowed."

Looking into the nature of the order passed, this Court opined that it can hardly be said to be an order in the judicial sense of the term.

4. However, the petitioner therein who is the beneficiary, and the respondents who are the Writ Petitioners herein were given an opportunity to appear before the Trial Court and after the matter was heard, the Trial Court passed the impugned order rejecting the application filed for amendment as sought for.

5. The petitioners herein had filed the application for amendment to mention that the value of the acquired land is more than Rs. 10 lakhs. In the earlier reference application filed, the value of the land was mentioned to be more than Rs. one lakh without making specific details as to the potentiality of the land but making a mention of its situation as that of within municipal limits of Bijapur city. However, to the said application, the beneficiary respondent No. 1 shown to have filed objections and after hearing both the parties, the reference Court dismissed the I.A.I filed by the petitioners herein under Order VII Rule 17 CPC.

6. The order on I.A.I is in respect of the amendment application filed under the CPC. As there is a bar to entertain revisions on interim orders in view of the amendment of the CPC, the petitioners chose to file this Writ Petition seeking to set aside the impugned order and to allow their application and also sought to amend the reference petition as stated in the I.A.I.

7. The learned Counsel appearing for the respondent No. 1 beneficiary also filed his objections contending that the application is not maintainable and the owners being not satisfied with the amount of compensation awarded by the LAO filed a reference application claiming only Rs, one lakh per acre and rightly the Trial Court after hearing both sides, rejected the I.A.I and only these two petitioners have approached this Court by way of Writ Petition, although there are four persons in all who claim to be owners.

8. Government Pleader appearing for the State is directed to take notice. Heard the counsel for the parties and the Government Pleader.

9. It is needless to mention that when the course is not open to the petitioners to seek setting aside the impugned order by way of a revision, as an alternative

efficacious remedy the petitioner can very well approach by way of writ. In that regard, it has been enunciated in the Judgment reported in *Surya Dev Rai Vs. Ram Chander Rai and Others*, of the said decision, which reads thus:

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No. 46 of 1999 with effect from 1.7.2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioned failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied; (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long - drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or

grave injustice should occasion. Care caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation of evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

10. Further, it is held that while exercising power under writ jurisdiction, the procedure ordinarily followed by the High Court is to direct the inferior Court or Tribunal to send its record or proceedings to the High Court for its inspection to enable the High Court to determine whether on the face of the record the inferior Court has committed any error occasioned failure of justice,

11. Thus it is needless to say that by exercising power of writ jurisdiction, this Court can very well look into orders passed following the procedure provided under the Civil Procedure Code, where any such interim orders passed against which no revision lies and where there is any error occasioned failure of justice.

12. It is the argument of the learned Counsel appearing for the petitioners that in the application the prayer sought is to amend the amount earlier mentioned as Rs. one lakh to Rs. ten lakh per acre, it is also stated that the land had NA potentiality as the lands in question adjoined were within Municipal limits of Bijapur city and adjoining the District & Sessions Court Complex, Bijapur; he further contended that it did not amount to granting the entire prayer as it is, or

that the Civil Court was not bound to pass the order in entirety awarding Rs. Ten lakhs; He also submitted that when the reference application was filed, petitioners had not realized the N.A. potentiality of the land and its value. As such in the usual course the same has been mentioned as Rs. One lakh and what is sought for is only seeking an amendment of the prayer column at the threshold that even enquiry was not completed and the learned Civil Judge without looking into the merit of the contention of the petitioners, simply relying upon the citations which are not applicable to the case on hand rejected the application. Hence, that order requires interference by this Court.

13. Learned Counsel appearing for the respondent No. 1 vehemently contended that such amendment is not permissible as it is a belated prayer. In support of his contention, he has relied upon the citation reported in N.V. Jayagopal Vs. N.V. Vijayagopalan and Others, , Kasinath Mukherji Vs. Collector of Puri, AND Special Land Acquisition Officer, Karnataka Housing Board and others Vs. P.M. Mallappa and others, and an unreported decision of this Court in Civil Revision Petition. No. 2110/98 to contend that the value of the land has to be determined as it exists on the date of the preliminary notification and that any application seeking for an amendment at a belated stage cannot be entertained. He also contended that any such applications filed seeking for amendment of the prayer for enhancement of compensation cannot be entertained.

14. Perused the citations relied on by the learned Counsel appearing for the parties and also the impugned order passed by the Civil Judge (Sr. Dn.) Bijapur.

15. While rejecting the application filed by the petitioners, the learned Trial Judge has relied upon the ruling reported in N.V. Jayagopal Vs. N.V. Vijayagopalan and Others, supra, and has opined that the delay in filing the amendment application is sufficient ground to reject the amendment application. In the said citation referred to by the Civil Judge there was inordinate delay of 7 years and the order came to be passed after 13 years of the application was made and further it was noted that the trial had commenced. Unless the Court comes to the conclusion that inspite of due diligence the party could not place the matter before convincing the trial Court on facts, it was held that it was not proper to amend the amendment application.

16. Learned Counsel appearing for the petitioners vehemently contended that amendment as sought for ought to have been allowed by the Trial Court because only after ascertaining from the concerned authorities the petitioners could come to know that the lands were having N.A. potentiality and fetches more market value and in the absence of mentioning said fact in the reference application, it is difficult for them to seek more compensation and only after due enquiry they were able to find out that the land value was more than what they had mentioned in the reference application. Accordingly, he also relied upon a ruling of the Apex Court reported in GHAZIABAD DEVELOPMENT AUTHORITY V. ANOOP SINGH AND ANR.(3) 2003 CCR 1857 to contend that there is no bar under the Act to file an amendment claim petition in regard to the quantum of

compensation claimed as there is no provision under the Act which is inconsistent with the power to allow the amendment. He also relied upon the ruling reported in JAI JAI RAM MANOHAR LAL V. NATIONAL BUILDING MATERIAL SUPPLY MR 1969 SC 1270 to contend that the proposed amendment will not in any way cause hardship to the other side and ultimately it is a matter of evidence before the Trial Court and allowing the amendment may not amount to virtually awarding compensation as claimed in the amendment and also to contend that mere inadvertence or negligence on the part of the parties was a bonafide mistake.

It is relevant to quote para 5 which reads as under:

"5. The order passed by the High Court cannot be sustained. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In Amulakchand Mewaram Vs. Babulal Kanlal Taliwala, , Beaumont, CJ, in delivering the judgment of the Bombay High Court set out the principles applicable to cases like the present and observed:

".....The question whether there should be an amendment or not really turns upon whether the name in which the suit is brought is the name of a non-existent person or whether it is merely a mis-description of existing persons. If the former is the case, the suit is a nullity and no amendment can cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposing party can be compensated for by costs."

In Amulakchand Mewaram Vs. Babulal Kanlal Taliwala, a Hindu undivided family sued in its business name. It was not appreciated at an early stage of the suit that in fact the firm name was not of a partnership, but was the name of a joint Hindu Family. An objection was raised by the defendant that the suit as filed was not maintainable. An application to amend the plaint, by substituting the names of the three members of the joint family from the name of the family firm as plaintiffs, was rejected by the Court of first instance. In appeal the High Court observed that a suit brought in the name of a firm in a case not within Order 30, CPC being in fact a case of mis-description of existing persons, leave to amend ought to have been given.

17. In so far as the procedural aspects, the Courts are required to be more pragmatic and practical in considering the grievance of the applicants and the

parties as the case may be. It is well settled that a party cannot be refused a just right merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. As noted above, the Apex Court has clearly envisaged that Courts always grant leave to amend the pleadings of a party unless they are satisfied that the party applying was acting malafide or that by his blunder he has caused injury to the opponent.

18. In the instant case, it is seen that the reference application is of the year 1981 and the amendment application was filed in the year 1988. For all these years, the matter was shown to be pending before the lower Court without any progress. However, the petitioners are shown to have approached the Court though late, but before the commencement of trial. Under the circumstances, there will be no impediment to allow the application in the first instance as there will be no prejudice caused to the parties. Further, the position is also well settled that there is no bar under the Act to file an application for amendment of the claim application in regard to quantum of compensation claimed as it is clearly held in the reported decision of the Apex Court reported in (3) 2003 CCR 1857 supra cited by the learned Counsel for the petitioners. Despite a little delay as it is clearly held by the Apex Court in the decision reported in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, cited supra, a party cannot be refused just relief just because of some mistake or negligence or inadvertence. Under the circumstances, the delay even of 7 years in filing this application seeking for amendment may have to be condoned in the interest of justice.

19. Further, the petitioner sought for relief to introduce some words in the claim application i.e. enlarging his prayer. It is needless to say that unless the prayer is amended, he has to restrict his claim even though legitimately he is entitled for more compensation having regard to the factual situation of the land in question which was acquired and also the potentiality of the land. In view of the foregoing reasons, the Writ Petition has to be allowed.

Accordingly, the petition is allowed. The impugned order passed by the II Addl. Civil Judge (Sr. Dn.) Bijapur, on I.A.I vide Annexure "A" by order dt. 17.1.04 dismissing the I.A.I is set aside. The prayer of the petitioner as sought for in I.A.I is allowed and he is permitted to amend the reference petition as sought for. No order as to costs.

Government Advocate is directed to file his memo of appearance within three weeks.