
(1999) 01 BOM CK 0005

In the Bombay High Court

Case No : Civil Rev. Application No. 909 of 1989

Bhau krishna Shinde deceased through L.Rs. Rakhmabai
Bhau Shinde and others

APPELLANT

Vs

Vatsala Bhau Dhamale and others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 18, 18(1), 18(2)

Citation : (1999) 01 BOM CK 0005

Hon'ble Judges : S.B. Mhase, J

Bench : Single Bench

Advocate : S.C. Bora, for the Appellant; R.T. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.B. Mhase, J.—This Civil Revision Application is for challenging the order passed by the 2nd Joint Civil Judge, Senior Division, Ahmednagar on 19-11-1986, below Exh. 30 in L.A.R. No. 6 of 1980, wherein the request of the respondents to add them as a party to L.A.R. No. 6 of 1980, by invoking the provisions of Order 1, Rule 10 of the CPC with section 53 of the Land Acquisition Act, has been accepted by the said Court.

2. 2 Hectares and 16 Ares land from the Gat No. 381 of Pimpaldoh has been acquired by the State of Maharashtra for the purposes of construction of the percolation tank. The award has been passed u/s 12 and so far as the Block No. 381 is concerned, the Land Acquisition Officer has observed that the recorded Kabjedars are Bhau Ranu, Saraswatibai Bhaurao Haral Bhau Bala Dalvi and Bhau Krishna Shinde. The amount of compensation be paid to them according to their shares. However, as there was a dispute between the parties interested, namely, Shahu Ranu Dalvi, Saraswati Bhaurao Harai, Bhau Bala Dalvi and Bhau Krishna Shinde as to the apportionment of the compensation or a portion of the compensation settled by the Special Land Acquisition Officer settling the award passed u/s 11, the said Special Land Acquisition Officer has made a reference for

the decision of the District Court, Ahmednagar by order dated 29-12-1979. In the said reference, in a column of the particulars of disputes, the ownership of the acquired land was shown to be disputed in respect of Gat No. 381. The Land Acquisition Officer has also shown the apportionment of the amount in the name of the respective parties, made on the basis of the 7/12 extract of the land. However, in view of the dispute, the matter has been referred u/s 30. While this reference was pending, the application Exh. 34 was preferred and it was requested that the name of Vatsalabai Bhau Dhavle be shown as opponent No. 2 and for the said purpose the powers under Order 1, Rule 10 of the CPC may be invoked by the Civil Judge Senior Division. As the impleading of the party was objected, the Civil Judge decided as to whether the respondent No. 1 should be made a party to the said proceeding and has ultimately allowed the said application as stated earlier.

3. The main question raised by the learned Counsel Shri S. C. Bora appearing for the petitioner is, whether the Order 1, Rule 10 of the CPC is applicable to a land reference referred u/s 30 by the Collector for the purpose of settling the dispute in respect of the apportionment of the amount of compensation fixed by the Collector and/or Special Land Acquisition Officer u/s 11 of the Land Acquisition Act.

4. In order to consider this, Mr. Bora invited the attention of this Court to the scheme of the Act and submitted that the Civil Court gets a jurisdiction to decide the questions in respect of the enhancement, measurement and more specifically about the apportionment of amount of compensation to be paid to interested persons, who are aggrieved by the award u/s 11 and who have not accepted the said award, as a result of the reference being made by the Collector u/s 18 or section 30 of the Land Acquisition Act. He submitted that the provisions of section 53 of the said Act permit the application of the CPC while deciding the reference referred to the Civil Court and the Civil Court is supposed to decide the point of reference referred by the Collector and cannot enlarge the scope of the inquiry. In short, the submission is, Civil Court's jurisdiction in a reference u/s 18 and/or u/s 30 is limited to the point of reference and, therefore, if the reference does not point out the point raised by party approaching before the Civil Court, the Court is not supposed to entertain the same, investigate the same and thereby enlarge the scope of inquiry. In support of these contentions, he has relied on Tejdhari and Others Vs. Baul and Others, and Smt. Ambey Devi Vs. State of Bihar and another, .

5. The learned Counsel appearing for the respondents stated that the respondent No. 1 was not a party to the land acquisition proceedings before the Collector/Special Land Acquisition Officer and, therefore, it was appropriate for the respondents to file application before the Civil Court when the reference is pending in respect of the apportionment. The learned Counsel submitted that section 53 permits the application of the CPC to the inquiry which is to be conducted by the Civil Court while the proceedings are pending before the Civil

Court under this Act. The learned Counsel relied upon Mrs. Ka Kriksibon Kharkongor and Another Vs. The Deputy Commissioner and Collector, Khasi Hills and Another, , Bagh Singh and Others Vs. The Special Land Acquisition Collector, Jalandhar and Another, and Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and very vehemently supported the order passed by the Trial Court.

6. Section 11 of the Act lays down the inquiry to be carried out by the Collector and pass the award. In said award the Collector has to state the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. That means, while passing the award, the claims of the interested persons which are known or in respect of whom the information has been received and/or that the Collector believed to be interested in the land, has to be considered by the Collector and Collector has to make the apportionment of compensation. Section 18 of the Land Acquisition Act further lays down that any person interested, who has not accepted the award or the amendment thereof, may by written application to Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation the persons to whom it is payable or apportionment of the compensation among the persons interested. Thereafter section 30 states that when the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

7. These provisions point out that either the party himself by invoking the provisions of section 18 may require the Collector to refer the matter for the apportionment of the compensation among the persons interested or the persons to whom it is payable or the Collector himself when he finds that there exists a dispute in respect of apportionment the compensation settled by him u/s 11, may refer it to the decision of the Civil Court. Thus, the dispute of apportionment of the Compensation and/or to whom the amount of compensation is to be payable comes to Civil Court under both sections referred to above, as a result of the reference.

8. One more thing required to be stated is that before the Collector reaches to the stage of section 11 namely the stage of passing of the award, the law contemplates the notices to be published in a official gazette u/s 4 and u/s 6 and calls upon every one who are known from the record and whose names though does not appear in the record or not known to the Collector but who are interested in the said property to file objections in respect of the acquisition. Apart from the official gazette, the said notices are required to be published in two daily newspapers circulated in that locality of which at least one shall be in the regional language. So far as the notice u/s 9 is concerned, the Collector has

to cause a public notice to be given at convenient place or near the land to be acquired, stating that the Government intends to take possession of land, and that claims to compensation for all interests in such land may be made to him. The reference to this provision is made for the reason that as a result of these notifications issued in the Official Gazette and the public notices caused to be issued by the Collector, everyone who has an interest in the land to be acquired is informed about the acquisition and is further called upon to lodge their objections, firstly in respect of the acquisition, secondly in respect of the measurement, thirdly in respect of the amount of compensation to be paid, etc. In the result, those who appear before the authorities by filing the objections, they are, no doubt, the parties to the proceedings but those persons who have an interest in the property but do not appear and/or choose to remain absent, can be said to have waived or relinquished their right to participate in the Land Acquisition Proceeding and therefore, they are bound by the decision taken by the Collector in the said proceeding subject to the decision of the Civil Court in the reference u/s 18 or 30 of the Act, and therefore, every person who has an interest in the property is expected to be vigilant about his own rights and whenever he finds that something adverse to him has been decided and/or adjudicated by the Collector, he shall approach to the Collector as per the provisions stated in section 18 or section 30, upon which the Collector refers the matter to the Civil Court. This is a procedure, which has been provided for in the Act. As against this, the present respondent No. 1 has not approached at any stage to the Collector/Land Acquisition Officer and for the first time preferred an application before the 2nd Joint Civil Judge Senior Division to implead him as a party in view of the provisions of Order 1, Rule 10 of the Code of Civil Procedure. Thus, instead of approaching to the Collector as required under the law for seeking reference in respect of the apportionment and/or the compensation to be paid or to whom the compensation is to be paid, the respondents preferred to approach the Civil Court directly pending reference u/s 30 so as to adjudicate that the respondent is also one of the persons entitled to get apportionment and/or to get the amount of compensation which has been fixed by the Collector u/s 11 of the said Act. The name of the respondent No. 1 does not appear in the award, wherein apportionment has been fixed by the Collector u/s 11 and further, the respondent No. 1 has not disputed the apportionment of the amount of compensation and/or to whom the said compensation is payable, so as to make known to the Collector that there exists a dispute as required to be referred u/s 30 or 18 of the Land Acquisition Act. And thereby the Civil Court is called upon to adjudicate the claim of that person who was not a party and who was not present and/or there was no information to the Collector, about his interest in the said land as required u/s 11 of the said Act and thus, a fresh dispute which was not in existence before the Collector in respect of the apportionment is tried to be introduced before the Civil Court by the addition of parties like respondent No. 1 by invoking the powers under Order 1, Rule 10 of the Code of Civil Procedure. It requires to be mentioned that the Land Acquisition Act is a special Act, which provides for the compulsory acquisition of the land

and, therefore, the provisions of the said Act will prevail upon the general statutes. Apart from this, section 53 has been partly read by the learned counsel for the respondent stating that the CPC is applicable to all the proceedings before the Court under the Act. With respect to the learned Counsel, it is required to be stated that the section starts with the saving clause to the following effect.

"Save insofar as they may be inconsistent with anything contained in this Act."

That means the saving clause specifically states that the CPC will apply to all the proceedings in the Court, save and except when the provisions of the CPC are not inconsistent with the Land Acquisition Act. Moment the provisions of the Land Acquisition Act are found inconsistent with Civil Procedure Code, the provisions of the Land Acquisition Act will apply and not the provisions of Code of Civil Procedure. Therefore, if the Civil Court gets a jurisdiction as a result of the reference being made and while making the reference the Collector is supposed to state the dispute which is existing before the Collector, the Civil Court is expected to decide the said dispute qua the parties to the said dispute. If the parties are added by invoking the powers under Order 1, Rule 10 of the Code of Civil Procedure, it is not only to result into addition of parties, but it is further likely to raise a dispute between the parties, which was quite a different than the dispute which was before the Collector, and therefore, the result is that if the law has provided a particular manner of instituting the proceedings, that procedure has to be followed and no other procedure can be allowed to be followed by the parties. In 1986 Mh.L.J. 844, Govind Narayan Lotlikar vs. Savitribai Raghuvira Lotlikar and others this Court has considered as follows :

"Impleading under Order 1, Rule 10, CPC is inconsistent with the scheme of the Land Acquisition Act. If a person who is not a party before the Collector but claims entitlement to compensation is allowed to be included by the District Court in a reference to it u/s 30 of the Land Acquisition Act, the nature of the dispute referred to will be substantially changed. The jurisdiction of the District Court on a reference u/s 30 of the Land Acquisition Act is restricted to the precise terms of the reference and no persons who were not parties to the original proceeding before the Collector can be sought to be joined on reference made to the District Court u/s 30 of the Land Acquisition Act."

In Tejdhari and Others Vs. Baul and Others, , It has been observed that the power conferred on the Court u/s 30 is only in respect of a matter referred to by the Collector. It is not a Court of original jurisdiction entitled to entertain the dispute between the parties on its own. Its jurisdiction is confined to the matter referred. A person applying for impleadment can claim his right only through the party, the right of which had been referred to by the Collector for decision to the Court. The case of a third person claiming right independently of the party whose dispute has been referred to by the Collector, stands on a footing different from one who seeks to be impleaded in place of or in substitution of the right of the party before the Collector. This controversy has been also considered by the Apex Court in Smt. Ambey Devi Vs. State of Bihar and another, , wherein in para No. 4

it is observed that:

""We accept the finding of the High Court that the appellant had not made any application u/s 18 though the appellant has asserted that she did make an application but no evidence has been placed before the High Court or in this Court. Thus, it is difficult to accept that such an application was in fact made before the Land Acquisition Officer within the limitation prescribed u/s 18(1) read with section 18(2) of the Act. Section 53 does not apply to the facts of the case. The procedure prescribed under sections 18 and 30 is inconsistent with the procedure prescribed under Order 1, Rule 10, Civil Procedure Code. Order 1, Rule 10, CPC would apply to implead a necessary or proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties who may be bound by the decision. That question does not arise since inconsistent procedure has been prescribed under the Act. As held earlier making an application in writing under sub-section (1) and within the limitation prescribed under sub-section (2) of section 18 are conditions precedent for the Land Acquisition Officer to make a reference u/s 18; only on its receipt, u/s 20 Civil Court gets jurisdiction to issue notice and thereafter to conduct enquiry, as contemplated under the Act. At that stage, the procedure of trial etc. as contemplated under the CPC would apply and section 53 of the Act would become applicable."

Thus, the Apex Court has found that the procedure provided under the Land Acquisition Act is inconsistent with the procedure provided under the CPC and thereby has refused to implead the parties under Order 1, Rule 10, Civil Procedure Code. It has further pointed out at what stage section 53 comes into play, namely for the purposes of the trial of the referred disputes and therefore, the impleading of a party by the Civil Court is not permissible. In this light, it requires to be mentioned that Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, , which has been relied upon by the learned counsel is not in respect of the impleadment of the parties in a proceeding u/s 18 or 30 of the Land Acquisition Act, and therefore, the ratio of the said case is not applicable to the present case. In fact, case should have not been cited by the learned counsel when the issue directly and substantially in question in the present matter was in respect of the procedure to be followed in a reference u/s 18 or 30 as we have discussed earlier. The learned Counsel thereafter has relied upon Mrs. Ka Kriksibon Kharkongor and Another Vs. The Deputy Commissioner and Collector, Khasi Hills and Another, and Bagh Singh and Others Vs. The Special Land Acquisition Collector, Jalandhar and Another, . These cases, no doubt, make a reference that the parties can be added, but it requires to be stated that in view of the Apex Court judgment referred to above i.e. AIR 1996 SC 1531, these cases are not good law on the point and this Court is not inclined to follow and rely on those cases.

9. In the result, the Civil Revision Application is allowed. The order passed by the Joint Civil Judge, Senior Division, below Exhibit 34 is hereby quashed and set

aside and the application Exhibit 34 is hereby rejected.

10. In the facts and circumstances of the case, no costs. Rule made absolute.