

(2000) 07 BOM CK 0002
In the Bombay High Court
Case No : Civil Rev. Application No. 91 of 2000

Comunidade of Bambolim	Vs	APPELLANT
Manguesh Betu Kankonkar		RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 47, 9
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 12, 18, 30, 31

Citation : (2000) 07 BOM CK 0002

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : S.S. Kantak, for the Appellant; S.G. Dessai and D.S. Naik, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—The revision is directed against the order dated 5th January, 2000 passed by the Civil Judge Sr. Division at Panaji in Execution Application No. 46/89/A. This revision raises an important question as to whether the suit, at the instance of a person, who claims entitlement to compensation awarded or to a part thereof, in acquisition proceedings, to which he was not a party, is maintainable. The facts are not in dispute. However, in order to appreciate the relevant question, the facts in nutshell are as under:-

2. The Government of Goa, Daman and Diu on deciding to widen the Panaji/Bambolim/Siridao Agacaim road, being National Highway 17-A, called upon the Deputy Collector, Goa North Division, Panaji, to draw acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as the "Act" for the sake of brevity). In the said acquisition proceedings, the present respondent received no notice under the relevant provisions of the Act, of the Land Acquisition proceedings, bearing No. LAO 386. Every interested person is required to make a statement regarding the interest of any other person in the

land sought to be acquired. However, it appears that, in spite of the Land Acquisition Officer having called upon the petitioner to furnish information of the interested persons, interested in the land sought to be acquired, the petitioner did not state interest of the respondent in the land and failed to furnish all the required information and suppressed the subsisting tenancy rights of the respondent and his interest in the land sought to be acquired.

3. The Deputy Collector, Goa, Daman and Diu, Panaji, acting as Land Acquisition Officer, made an Award on 24-3-1981 under the provisions of section 11 of the Act; wherein part of the property "Odlem Ran" having cashew garden, belonging to the petitioner, of which the respondent was a tenant was acquired. The Land Acquisition Officer determined the compensation in the sum of Rs. 3,14,468.68, and paid the said amount of compensation to the petitioner. Since the petitioner did not disclose the interest of the respondent, he was unaware of the acquisition proceedings, with the result the entire amount of compensation was received by the petitioner and nothing was paid to the respondent although he was entitled to receive 50% of the compensation being legal tenant of the land.

4. The present respondent Manguesh sometime in the month of October, 1981 came to know about the acquisition proceedings when the road widening work was taken up by the Government in the acquired land. He immediately, thereafter issued a notice to the petitioner on 18-10-1981 calling upon him to pay half of the awarded amount to which the petitioner did not reply. He, therefore, filed Special Civil Suit No. 125/1982/A in the court of Civil Judge S.D. at Panaji on 30th September, 1982 against the petitioner seeking money decree in the sum of Rs. 1,57,234.34 being 50% of the amount of compensation received by the petitioner with interest at the rate 6% per annum from the date of filing of the suit till recovery.

5. The aforesaid suit was decreed on 31st July, 1986. Being aggrieved by the said decree, the petitioner filed First Appeal No. 81/86 in the High Court on 24-10-1986. The said First Appeal was dismissed by the High Court, on merits, on 14-12-1987. In the aforesaid proceedings, at no point of time either the maintainability of the suit or the jurisdiction of the Civil Court, to entertain the suit, was challenged by the petitioner (defendant in the suit). Though in the plaint it was specifically pleaded by the respondent (plaintiff in the suit) that the Civil Court has jurisdiction to entertain and try the suit, the said averments were not denied in the written statement by the petitioner while contesting the suit. Consequently, the pleadings pertaining to jurisdiction of the Civil Court to entertain and try the suit were deemed to have been admitted in view of Order 8, Rule 5 of CPC with the result no issue was required to be framed or tried relating to jurisdiction of the Civil Court.

6. The petitioner after having suffered the aforesaid decree and after having lost the First Appeal in the High Court filed inter-pleader suit being Special Civil Suit No. 117/88/A, on 11-7-1988, in the Court of Civil Judge Sr. Division at Panaji against the respondent and two other sets of tenants, contending therein that

apart from the respondent, the said two sets of tenants are also claiming 50% of the awarded compensation as tenants, showing readiness and willingness to pay share to such persons as may be entitled thereto as tenants of the acquired land and further admitted that the petitioner has no claim to 50% of the awarded compensation. In the said suit, the petitioner claimed relief for restraining the respondent from taking any proceedings against the petitioner in respect of the acquired land and the compensation and further pleaded that impleaded defendants be directed to inter-plead together concerning claim of their tenancy in respect of the acquired land. On being noticed, the present respondent filed his written statement on 14-11-1988. However, the said suit was dismissed, on 24-10-1999. against the defendants No. 1 to 5 under Order 9, Rule 8 of CPC and against L.Rs. of defendant No. 6 under Order 9, Rule 3 of CPC and thus the proceedings were closed.

7. The respondent having obtained decree in Special Civil Suit No. 125/82/A filed Execution Proceedings on 12-7-1989 being Execution Application No. 46/89/A to execute the decree.

8. On being noticed, the petitioner appeared and filed objections to the execution proceedings on 3-1-1989 and contended that in the inter-pleader suit the rights of the decree holder, to the compensation granted under the decree, are in dispute. Petitioner also prayed for stay of the execution proceedings. In other words, the petitioner did not file any significant objection to the execution of the decree except one pointed out hereinabove.

9. The aforesaid Award was a subject matter of reference under sections 18 and 30 of the Act, at the instance of one Shri Atmaram Mulgaonkar and the legal heirs of late Yeshwant Gaums as they were claiming interest in the land. The said Land Acquisition Reference was registered as Land Acquisition Case No. 15/84.

10. Pending aforesaid execution, the said land acquisition reference was tried by the Addl. District Judge, Panaji, who rejected the said Reference holding that the applicants, therein, had no interest in the land but the present respondent had interest on the date when the land was acquired. The relevant portion from the said judgment is as under :-

From the above evidence it is clear that none of the applicants/claimants are the tenants of the suit property as they have never paid any rent to respondent No. 2 Comunidade and the late father of the applicant No. 1 had paid the rent only for 2 years in 1970-1971 and that too it was for plucking of cashew fruits. As per the Judgment in Special Civil Suit No. 125/82/A filed by Manguesh Betu Kankonkar the trial Court i.e. the Court of Civil Judge, Senior Division at Panji has held that the said Manguesh Kankonkar is the tenant of the suit property and as such he is entitled to 50% of the total compensation awarded by the Land Acquisition Officer i.e. Rs. 1,57,234.34p besides interest at the rate of 6% p.a. This Judgment of the trial Court has been also confirmed by the Judgment of the Hon"ble High Court, Panaji Bench in First Appeal No. 81/1986 exh. Rw. 3/C. Even

the respondents witnesses have admitted that the said Manguesh Kankonkar was the tenant of the suit property. The applicants/claimants have failed to produce any declaration of their tenancy given by the Competent Mamlatdar in respect of the suit property nor they have produced any rent receipts to show that either of them were the tenants of the suit property at the time of section 4 notification acquiring the land for road widening.

(Emphasis supplied).

11. The executing Court on 27-7-1999 passed an Order attaching Rs. 3,20,0000- from the Bank account of the petitioner. It is only thereafter the petitioner filed the fresh objections on 28-5-1999 which were replied by the respondent on 27-10-1999. In the objection filed by the petitioner, an objection was raised to the excitability of the decree on the ground that the Land Acquisition Act being self contained Code, the Civil Court had no jurisdiction to pass decree in Special Civil Suit No. 125/1982/A. Thus the same was obtained from a Court which had no inherent jurisdiction to entertain and try the suit. In the submission of the petitioner, the Court passing the decree suffered from inherent lack of jurisdiction and therefore the decree was a nullity. According to the petitioner/objector, it was obligatory on the part of the respondent to have invoked jurisdiction of the Land Acquisition Officer u/s 30 of the Act and ought to have established his rights to claim 50% of amount of compensation in the Reference proceedings.

12. The said objection was replied by the respondent/decreed-holder and after hearing the parties to the execution proceedings, the Trial Court dismissed the said objection holding that the respondent/decreed holder was not a party before the Land Acquisition Officer, hence he could not have raised an objection u/s 30 of the Act. The executing Court found that the only recourse open to him was to file suit against the petitioner which he did and it was further held that the Civil Suit filed by the respondent being merely for recovery of money was perfectly maintainable. As such the Court below held that the Civil Court did have jurisdiction to decide the suit and the decree passed therein cannot be termed as a nullity. The Court below further held that the executing Court cannot go behind the decree and rejected the objections holding it to be without any merits.

13. Being aggrieved by the aforesaid order of the executing Court, the revisional jurisdiction of this Court is invoked to challenge the said order.

14. The only ground canvassed by the petitioner in support of his submission was that in the event of any dispute as to the entitlement of a person to receive compensation or the apportionment thereof, it was obligatory on the part of the respondent to have applied for a reference to the Civil Court u/s 30 of the Act. The Civil Court had no jurisdiction to entertain and try such a suit. The learned counsel for the petitioner further went on to submit that the Decree of the Civil Court suffered from inherent lack of jurisdiction as the suit itself was not maintainable. Consequently, the decree sought to be executed cannot be allowed to be executed, it being a nullity. In his submission, the said objection could be

raised even before the executing Court. The reliance was placed on the judgments of the Apex Court in the matter of State of Bihar Vs. Dharendra Kumar and others, . State of Mizoram Vs. Biakchhawna, and Arulmighu Lakshminarasimhaswamy Temple Singirigudi Vs. Union of India (UOI) and Others, .

15. The learned counsel appearing for the respondent, filed an affidavit of the respondent on record, and brought all the relevant facts on record and submitted that the objections sought to be raised to the execution of the decree are not only utterly untenable but amounts to abuse of the process of law. He tried to substantiate his submissions from the undisputed facts that the Special Civil Suit No. 125/82/A for recovery of 50% of the amount of compensation filed against the petitioner was bitterly contested by the petitioner wherein no objection was raised to the jurisdiction of the Civil Court or to the maintainability of the suit. He further submitted that even in the appeal before the High Court no such contention was raised. Consequently, he submitted that the decree suffered by the petitioner and the findings recorded therein that the respondent is entitled for 50% of the amount of compensation would operate as res judicata between the parties and the said objection could not have been allowed to be raised, at this stage, in the execution proceeding. He contended that the executing Court rightly rejected the said objection and placed reliance on the judgment of the Apex Court in the matter of Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, and further submitted that the objection sought to be raised before the executing Court might and ought to have been made a ground of defence or attack for the decision of the Court in the earlier proceedings. Not having raised such objections, the said issue will have to be treated as issue in decision and as such the said finding would operate as res judicata and placed reliance on the judgment of the Apex Court in R.G. Anand Vs. Delux Films and Others, .

16. Learned counsel appearing for the respondent further submitted that the petitioner having failed to raise an objection to the execution of the decree within a period of three years, his objection u/s 47 by application dated 25-8-1999 was barred by limitation. In his submission the application u/s 47 of CPC will attract Article 137 of the Limitation Act. Thus, according to him the rejection of the objections by the executing Court can be supported on this count also. He further contended that apart from the aforesaid technical objections, the suit tiled by the respondent for claiming 50% amount of the compensation from the petitioner was perfectly maintainable and the maintainability of such a suit has been recognized by the Apex Court and also by this Court. He sought to place reliance on the judgment of the Apex Court in the matter of Dr. G.H. Grant Vs. State of Bihar, , Govind Narayan Loktlikar Vs. Savitribal Roghurira Lotlikar and Others, and also brought to my notice unreported judgment of this Court in First Civil Appeal No. 49/1990 decided by Single Judge of this Court on 9th October, 1992 in the matter of Shri Babusso Godu Gaunso vs. Shri Suryakant Moga Gaunso and others (Per. N. P. Chapalgaonker, J.) In this backdrop, he requested for dismissal of the revision with costs.

17. It is true that when a special statute has created a machinery for granting relief's which are awardable only under that statute, the jurisdiction of the Civil Court u/s 9 of the CPC cannot be invoked for the same relief. Section 18 of the Land Acquisition Act provides for reference to the Civil Court in case the compensation awarded by the Land Acquisition Officer is not acceptable to the claimant and the law provides that if he accepts the amount under protest and prays for a reference to be made u/s 18 of the Act a reference shall be made. Therefore, Civil Suit for enhancement of compensation is not maintainable in case the amount is not accepted by the party under protest and reference u/s 18 is not prayed. The second proviso to sub-section (2) of section 31 of the Land Acquisition Act, 1894 makes it clear that if a person has received compensation without registering his protest, he is not entitled to make an application u/s 18 and the remedy provided by the statute is barred. Needless to say the general remedy by recourse to the Civil Court is also barred. To receive compensation for the land compulsorily acquired is a right created by the Land Acquisition Act and will have to be exercised by following the procedure laid down by the statute. In this behalf in support of this submission, the learned counsel appearing for the petitioner, relied on *State of Mizoram Vs. Biakchhawna*, . However, the subsequent discussion would show that the question involved in the present case is little different which was not for consideration in the said judgment of the Apex Court.

18. u/s 30 a discretion is vested in the Collector to refer the matter in case a dispute arises as to the apportionment of the compensation u/s 11 or any part thereof. This is a discretionary power of the Collector, he may or may not refer such dispute for the decision of the Court. It becomes thus clear from the scheme of the Act that there are four kinds of disputes that can be referred to the Court for determination. These disputes are in respect of the measurement of the area acquired, receipt of the quantum of fair compensation, of the apportionment of the awarded compensation and finally in respect of persons to whom compensation is payable. These disputes are manifestly the disputes by the persons who are before the Collector, for obviously, the Collector will not be aware of the claims of the persons who are not before him and think they have a right to share or interest in the acquired land and therefore are entitled to the awarded compensation or part thereof. This being the case, the dispute referred to in section 30 is the dispute of the interested persons who are before the Collector and, has raised before him the said dispute. This dispute is the one which is referred by the Collector for determination of the Court.

19. The dispute in respect of apportionment may also arise in respect of the claimants if they are more than one and in such a case, reference can be made by the Land Acquisition Officer to the Civil Court. But the scope u/s 30 is limited only to the matter referred to the Court and the reference would only be in respect of the dispute between the claimants who have appeared before the Land Acquisition Officer. If a party is not served with a notice u/s 9 or notice of award under sub-section (2) of section 12 and is not before the Land Acquisition Officer,

but had certain interest in the property or had a share in the property acquired, he is not precluded of filing civil suit to get compensation in respect of his share against a person who has received compensation amount by invoking the remedy u/s 9 of Civil Procedure Code. If a person is held to be a claimant by the Land Acquisition Officer and amount of compensation is paid to him. it is not a decision of title and persons who are sharers, but who are not served with notice in the land acquisition proceedings are not bound by such finding recorded. A Civil Suit by such persons is always competent.

20. The aforesaid interpretation gets support from the third proviso to sub-section (2) of section 30 of the Land Acquisition Act which provides that nothing therein shall affect the liability of a person who may receive the whole or any part of the compensation awarded under the Act to pay the same to the person lawfully entitled thereto. Therefore, the right which is already in existence is recognised by this proviso to sub-section (2) of section 31.

21. The aforesaid position of law has further been made clear by this Court in the case of Deo Sansthan Chinchwad and Others Vs. Chintaman Dharnidhar Deo and Another, . Therefore, the right, which is already in existence, is recognized by this proviso to sub-section (2) of section 31. if a person claims his share from another person who has received the compensation, he is not claiming any special right created by the Land Acquisition Act. 1894 and is claiming his right which he can establish in the Civil Court. This proposition is no more res integra. In the case of Deo Sansthan Chinchwad and Others Vs. Chintaman Dharnidhar Deo and Another, , a Division Bench of this Court was pleased to hold as follows :-

Unless the claim of a person who is lawfully entitled to a share in the compensation money, is already adjudicated upon under the provision of the Land Acquisition Act or such person having had notice of such proceedings, appears therein and fails to assert and prosecute his claim to a share in accordance with the provisions of that Act, he would be entitled u/s 31(2) proviso 3 to file a suit to recover his share from the person who may have received the whole or any part of the compensation amount awarded under the Act.

22. The learned counsel for the petitioner further relied upon the judgment of the Apex Court in the matter of State of Bihar Vs. Dhirendra Kumar and others, . In this case, the Apex Court was mainly dealing with the question relating to the maintainability of the suit challenging the validity of Notification u/s 4 and declaration u/s 6 of the Land Acquisition Act. The Apex Court was pleased to hold that the Civil Court has no jurisdiction to go into the question of validity or legality of the Notification u/s 4 and declaration u/s 6 except by the High Court in proceedings under Article 226 of the Constitution. In the wake of this question, the Apex Court was pleased to hold that the Civil suit was not maintainable. In my opinion, the said judgment is of no assistance to the applicant. He further relied upon the judgment of the Supreme Court in the matter of Arulmighu Lakshminarasimhaswamy Temple Singirigudi Vs. Union of India (UOI) and

Others, . In this case, the Apex Court was dealing with the question as to what would be the proper procedure if dispute relating to title of the property involved in the proceedings initiated under Land Acquisition Act is raised. While answering this question, the Apex Court ruled that the legal recourse open is to seek reference u/s 30 of the Act. However, from the said judgment, it is clear that if the parties are before the Land Acquisition Officer then in that event there is no other alternative but to seek a reference u/s 30 of the Act. However, question involved in the present case was what should be the remedy for a person who was not present before the Collector or Land Acquisition Officer in the award proceedings. Under these circumstances. none of the cases sought to be relied upon are applicable to the controversy involved in the present case.

23. The learned counsel appearing for the respondent, sought to place reliance on the judgment of the Apex Court in the matter of Dr. G.H. Grant Vs. State of Bihar, wherein the Apex Court was dealing with a direct question as to what happens, if a person who has not appeared in the acquisition proceedings before the Collector, may be for want of notice. While answering this question, the Apex Court held that such a person may raise a dispute relating to apportionment and may apply to the Court for reference u/s 30 for determination of his right to compensation which may have existed before the award or which may have devolved upon him since the award. The Apex Court found that since no period of limitation has been prescribed u/s 30 the claimant may approach the Collector who may refer the dispute in his discretion to the Civil Court or may relegate to the person raising dispute to agitate the same in a suit and pay the compensation in the manner prescribed by his Award. Thus it would be clear that the Apex Court while dealing with the scheme of the Land Acquisition Act. in general and, in the light of section 30 of the Act, in particular; specifically, held that a separate suit is maintainable.

24. This High Court, dealing with the question, can a District Court in a reference u/s 30 of the Act implead person who claim to be a person entitled to compensation awarded in land acquisition proceeding or to a part thereof or claims to be interested in the acquired property when such person was not a party or present before the Collector? This Court in Govind vs. Smt. Savithhai (supra) answered that the doors of the Civil Court are always open to such person and such person can always approach the Civil Court with a suit to get his right duly determined.

25. In the light of the aforesaid plethora of decisions. I am unable to accept the contention raised by the applicant and I am of the considered opinion, for the reasons stated in the foregoing paragraphs, that the Civil Suit in the facts and circumstances of the present case was perfectly maintainable and the Civil Court had a jurisdiction to entertain and try the Suit.

26. The admitted facts extracted hereinabove and in the wake of earlier litigation between the parties, a decree passed by the Civil Court in Special Civil Suit No. 125/1982/A dated 30-9-1982 and confirmation thereof on 14-12-1987 in First

Appeal No. 81/1984; on merits, and the said judgment having become final, will operate as res judicata between the parties u/s 11 of CPC and the same is binding on the petitioner.

27. The petitioner having failed to challenge the jurisdiction of the Civil Court and having failed to contest the maintainability of the suit, the said issue will have to be treated as an issue in trial and the said judgments would also operate as constructive res judicata between the parties. On this count also the objection raised by the petitioner to the execution of the decree must fail.

28. Having said so, I do not feel it necessary to decide the third challenge to the order, namely; that the objection raised u/s 47 of CPC is barred by limitation, not having been raised within the period of three years, as required under Article 137 of the Limitation Act, 1963, as the said question is a mixed question of fact and law. The said question was never raised before the executing Court. Therefore. I do not propose to deal with this issue in the present revision application.

29. In the result, the order of the Trial Court is confirmed. The revision application is dismissed with costs quantified in the sum of Rs. 3000/-.