

(1980) 05 MAD CK 0005

In the Madras High Court

Case No : C.M.P. No. 2790 etc. of 1980 in Application No. 319 of 1973

Kanyaka Parameswari Devasthanam and Charities

APPELLANT

Vs

Srila Sri Ambalawana Pandara Sannadhi and Another

RESPONDENT

Date of Decision : 06-05-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 41 Rule 21
Land Acquisition Act, 1894 — Section 18, 3, 50(2), 5A

Citation : AIR 1981 Mad 42 : (1980) 93 LW 623

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : P. Venkataswami, for the Appellant; Govt. Pleader and B. Kumar, for the Respondent

Judgement

Sethuraman, J.—These petitions have been filed by Sri Kanyaka Parameswari Devasthanam and Charities and relate to the proceedings

under the Land Acquisition Act. Two grounds and 183 sq. ft. together with building, structures, etc., were acquired under the Land Acquisition

Act for the purpose of providing additional accommodation to S. K. P. D. Boys High School run by the Devasthanam. The relevant notification u/s

4(1) of the Act was issued on 11-3-1961, and the declaration u/s 6 was made on 26-6-1966. The property is built up to the entire extent except

for 745 sq. ft. approximately which remained as open space. The Land Acquisition Officer took the value of the property as Rs. 57,656 including

solatium. In arriving at this value he took the monthly income from the property and capitalised it. For taking the capitalised value he took the

market quotation of gilt-edged securities. The capitalised value was taken as Rs. 48,305 with the addition of solatium. The total compensation

payable was calculated to be Ks. 57,656-63. The owner of the property was not content with the amount awarded as compensation, and.

therefore, there was a reference u/s 18 of the Land Acquisition Act. When the matter came before the City Civil Court the compensation was fixed

at Rs. 60,000 with further additions thereto of solatium and interest. The claimant was not satisfied even with that amount and he therefore, filed an

appeal before this court. In the appeal the respondent was the Collector of Madras and after hearing the applicant's counsel and counsel for the

Government Pleader it was held that the claimant will be entitled to Rs. 1,48,015 as compensation along with solatium and interest in accordance

with law. The judgment in appeal was rendered on 1-9-1977.

2. As already mentioned Sri Kanyaka Parameswari Devasthanam and Charities has now come forward with these applications. In C. M. P. 2790

of 1980 purporting to be under Order 1. Rule 10 (2), C. P. Code. the prayer is for impleading the devasthanam as a party respondent. In C. M. P.

3529 of 1980 the prayer is for condoning the delay of 461 days in filing the petition and in C. M. P. No. 3530 of 1980 purporting to be under O.

XLL R. 21, read with Section 151, C. P. Code, the prayer is for setting aside the decree and judgment dated 1-9-1977.

3. When these petitions came up for bearing, there was a preliminary objection on behalf of the claimant that the devasthanam had no locus standi

in making these petitions by seeking to come on record and getting the judgment set aside. For the applicant devasthanam, the submission was that it

was the person which was affected by the judgment, that the provisions of the Land Acquisition Act envisaged participation in the proceedings by

the person for whom the acquisition was made and that the applicant was. therefore, justified in seeking the several prayers in the respective

petitions.

4. The only question that requires to be considered at this stage is whether the Devasthanam has any locus standi to apply for being brought on

record as respondent We may set out a few more facts before considering the point formulated above. By a letter dated 16-12-1966 the

Collector of Madras, forwarded a preliminary valuation statement of the property sought to be acquired and required the applicant Devasthanam to

deposit the said sum so as to enable the Land Acquisition Officer to pass the

award in the case. It is not clear whether and when the amount was deposited. The award was passed on 20-11-1968. At the instance of the claimant, there was a reference u/s 18 of the Act to the civil court and there was an intimation on 28-12-1972 about the civil court having passed its order on the reference and the applicant was required to send its opinion on the question of filing an appeal in the High Court against the judgment of the civil court. The applicant was not obviously aggrieved by the amount as awarded by the civil court and, therefore, it did not suggest any appeal against the order of the civil court. However, the matter came before this court at the instance of the claimant that is the owner of the property. It is in that appeal that there was an enhancement of the compensation. By the letter dated 24-4-1978, a copy of the judgment of this court dated 1-9-1977 was forwarded by the Special Deputy Collector for Land Acquisition, Madras. In the letter dated 4-5-1972, to the Special Deputy Collector, the applicant expressed surprise at its not being informed at any stage that there was an appeal preferred and that the High Court had delivered an order increasing the compensation. The Government Pleader had apparently not recommended any further appeal against the judgment of this court and by the letter dated 22-9-1978, the applicant was requested to re-examine the matter in the light of the Government Pleader's opinion and offer its remarks. There was a reminder on 1-12-1978 and on 8-12-1978, the applicant informed the Government that in view of the Government Pleader's opinion the Committee of Management had dropped the matter. The grievance that the Devasthanam had not been intimated about the filing of the appeal by the owner of the property was reiterated. It is, thereafter, that is in January 1979 the applications under consideration came to be filed.

5. Section 4 of the Land Acquisition Act 1894, provides for the appropriate Government issuing a notification if it appeared to the Government that the land in any locality was needed or was likely to be needed for any public purpose. In Section 3(f) the word "public purpose" has been defined in an inclusive manner. It is unnecessary for our present purpose to go into the connotation of the expression public purpose as there is no dispute that the present acquisition has been made for such a purpose. After the notification it would be lawful for any Officer authorised by the

Government. to enter upon the land, and to do certain things referred to in Section 4(2). Any person interested in any land which has been notified

u/s 4, sub-section (i), may, within 30 days after the issue of the notification, object to the acquisition of the land. The expressions person

interested" has been defined in section 3(b) as including all persons claiming an interest in compensation to be made on account of the acquisition

of land under this Act and a person shall be interested in an easement affecting the land. The Collector is required to give an opportunity of being

heard to the person interested and he has to make -a report to the Government containing his recommendations on the objections of the person

interested. For the purpose of Section 5A, a person is deemed to be interested in the land if he would be entitled to claim an interest in

compensation if the land is acquired under the Act Section 6 provides for the declaration" that the particular land is needed for a public purpose.

The declaration so made is conclusive evidence that the land is needed for a public purpose, and after such declaration, the appropriate

Government may acquire the land in the manner provided by the Act. Section 9(1) provides for the Collector causing public notice being given

stating that the Government intends to take possession of the land and that claims to compensation for all interests" in such land may be made to

him. Notice has to be served on the occupier of such land and on all such persons known or believed to be Interested therein. Section 11

authorises an enquiry to be made by the Collector and passing an award fixing the compensation. In determining the amount of compensation, the

Collector is to, be guided by the provisions of Sections 23 and 24. When the Collector has made an award u/s 11, he may take - possession of

the land, which would vest. absolutely in the Government free from all encumbrances. Any person interested, who has not accepted. the award

may, by written application to the Collector, require that the matter may be referred to the court. The expression court means the civil court of the

original jurisdiction, unless the State Government has appointed a special judicial officer within any specified local limits to perform the functions of

the Court under this Act. There is a provision in Section 19 as to the contents of the reference to the civil court. Section 20 contemplates notices

being given by the civil court to the applicant, at whose instance, the reference has been made to all persons interested in the objection to the

acquisition and if "the objection is in regard to the area of the land or to the amount of the compensation, to the Collector. The scope of the enquiry is restricted by Sec. 21 to a consideration of the interests of the persons affected by the objection. There are provisions in Sections 23 to 27, as to the manner in which the compensation is to be determined and to the procedure to be adopted in regard to the making of the award of compensation. All these provisions are to be found in Parts II and III of the Act. By Section 31, it is the Collector who has to tender the payment of the compensation to the person interested. In the case of acquisition of land for companies, there are provisions made in Part VI. The word "company" is defined in Section 3(e) as meaning a company registered under the Indian Companies Act, 1882, or under the (English) Companies Act etc. and also includes a Society registered under the Societies Registration Act, 186D, and registered society within the meaning of the Co-operative Societies Act 1912, or any other law relating to co-operative societies for the time being in force in tiny State. The State Government is empowered by -Sec. 38 to authorise any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by Section A. An industrial concern, ordinarily employing not less than one hundred workmen and not being a company, desiring to acquire land for the eiection of dwelling-houses for workmen employed by the concern Or for the provision of amenities directly connected with such employment, is to be deemed to be a Company for the purposes of Part VII, and the provisions of Ss. 5A, 6, 7, 17 and 5D are to be interpreted as including references also to such concerns. The provisions for acquisitions were not to be put into force for acquiring the land for any company except with the previous consent of the appropriate Government. It is also necessary that before such acquisition proceedings are started the Company executes an agreement in favour of the Government. The consent of the State Government for acquisition could be given in certain circumstances specified in S- 40(1), one of the circumstances being that the acquisition is needed for the construction Of some work and that such WO& is likely - 80 prove useful to the public. Under Sec. 41, ft Company can enter into an agreement with the State Government in to (s) the payment of the. cost of acquisition to the State Government, (H) the transfer, on such payment to of to the company and (iii) the terms on which the land is to be

held by the company (iv) the time within which and the conditions on which the work is to be executed and maintained, and (v) the terms on which

the public would be entitled to use the work. The agreement is to be published in the Official Gazette as required by Section 42. Section 5. enacts

that where the provisions of the Act were put in force for the purpose of acquiring land at the of any fund controlled or managed by authority or

any Company, the charges of and incidental to such Acquisitions are to be defrayed by the company, local authority etc. In any proceeding held

before the Collector court in such cases (the expression "court" has been defined as seen already) the local authority or company concerned may

appear and adduce evidence for the purposes of determining the amount of compensation. Under the Provision to Section" 50(2), no such local

authority or company is entitled to demand a reference u/s 18. The result of this provision is that as far as the compensation awarded by the Land

Acquisition Officer is concerned, the company or the local authority would be bound by it and it is only the owner of the property who. can

demand a reference to the civil court Section 53 attracts the provisions of the Civil Procedure Code, to all proceedings before the court (defined

as seen already in so far as those Provisions are not inconsistent with anything contained in the Land Acquisition Act These are the material

provisions in the context of which the present applications have to be considered.

6. The summary of the provisions of the Act would clearly indicate that there are really only two parties to the reference, in the Civil Court and the

further proceedings that may emanate from it, the two -Parties being the Collector and the owner of the property. The person for whom Hip land is

being acquired has in relation to the compensation and do not to demanding reference under Sec. 19, it would be clear that they are not really

parties to the reference in the civil court and .the further proceedings that may emanate from it, the two parties being the Collector and the owner

of the property. When they are not the parties even before the Collector they cannot seek to intervene in the appeal or after the appeal in disposed

of to come forward with any application as has been done in the present case.

7. In *Koftiyar Nattar's estate rep. by its Receiver v. Special Land Acquisition Officer*. (C. R. P. (235 of 1954) *Rajamannar C. 1.* bad to consider

a civil revision petition to revise the order in which a party for whom The

acquisition was made,. was permitted to raise a question of jurisdiction and competency of the reference. , The learned Judge observed, after referring to Section 50(2) as follows-

In most unambiguous language, it provides that The local authority or company may appear, adduce evidence for one particular purpose namely, the purpose of determining the amount of compensation The learned judge was therefore wrong in overruling the objection raised on behalf of the claimant and in permitting the Society to appear and take part in the arguments in ft petition"".

8. In that case the learned Subordinate Judge had expressed the view that the courts jurisdiction could not me limited to the purpose of taking

evidence and fixing the amount of compensation and that if any question of jurisdiction and competency of the reference was raised, The court was

bound to consider those objections before deciding the amount of compensation to be awarded. Rajamannar C. 1. pointed out that the learned

Judge had totally misconceived the scope and extent of his jurisdiction on a reference u/s 19 of the Land Acquisition Act which Was a special

jurisdiction conferred for a special purpose. The learned chief justice condemned in no uncertain terms and in usually strong language the attempt

on the part of The Co-operative Society to raise any question of jurisdiction as regards the acquisition and its being considered by the civil court.

9. It is necessary to remember, as pointed out in the judgment above that the jurisdiction conferred on The civil court in the first instance and the

appellate Court is a Special They relate only to the determination of the compensation. The parties to the proceedings could only be the owner of

the property and the person who acquired viz., the Government.

10. Mr. P. Venkataswami the learned counsel for the claimant-Devasthanam, submitted that the Collector was acting only as its agent and that the

principal was, therefore, entitled to intervene in these proceedings. This contention cannot be accepted for more than one reason. There is no

question of any agency, as rich. It is the Government which makes the acquisition and transfer the land to the party concerned if any public purpose

is involved in the works to be executed by the said authority, Throughout the Act, the underlying idea is that the person who pays the

compensation to the owner is only the Collector and the person who can dispute

the compensation as awarded by the land Acquisition Officer is the person interested and not any one else. If these provisions are borne in mind, then there is absolutely no scope for the acceptance of (the contention urged by Mr. P. Venkatikswami.).

11. As already seen, the present applications purport to be made under O. 1, R. 10, C. P. C. This provision enables the court to order the name of any person to be substituted or added as plaintiff if the suit had been instituted in the name of a wrong person or where it is doubtful whether it has been instituted in the name of the right plaintiff. In such a case, if the court is satisfied that the suit has been instituted through a bona fide mistake and that it is necessary for the determination of the real matter in dispute to do so it may order any other person to be substituted or added as plaintiff.

The court has also suo motu powers on an application to order that the name of any party improperly joined be struck out or to join any other party as plaintiff or defendant, of whose presence before the court may be considered necessary in order to enable the court effectually and completely to adjudicate and settle all the questions involved in the suit. Whether this provision is attracted under the Acquisition Act came to be

considered by the Andhra Pradesh High Court in *Sree Mullapudi Venkatarayud, Memorial Medial Trust, Tanuku Vs. Chirapu Varada Raju and*

Another, . In that case, a trust had set in motion the Proceedings under the land Acquisition Act. After the award of the compensation by this Land

Acquisition Act. the Trust wanted to implead itself as a party in the appeals filed before the High Court against the judgment of the civil court. The

appeals were both by the owner of the property as well as by the Government. The question was whether the Trust could seek to implead itself as a

party and intervene in the proceedings. A Division Bench of the Andhra Pradesh High Court held that by enacting the special provision of sub-

section (2) of Section 50 of the Act, the General application of O. 1, R. 10 and Section 151, C. P. Code, must be held to have been positively

excluded. This judgment was approved by the Full Bench of the Andhra Pradesh High Court in *The Andhra Pradesh Agricultural University,*

Rajendranagar Vs. Mahmoodunnisa Begum and Another, . In that case, the acquisition was for the purposes of an agricultural university. The

question as to whether it was a company or the local authority was not argued.

In that case, the University wanted to me an appeal judgment of the civil court and the question was whether it could b~ granted leave to file an appeal. At page 139 it was observed as follows-

The scheme of the Act which emerges from the above consideration of the relevant provisions, is that when an acquisition of land is made either

for a public purpose undertaken by the Government or for the benefit of a local authority co company or any other person, the proceeding is only

between the owner of the land sod the Government Even when the acquisition is made not for the Government but for somebody else the

Government alone is entitled to act and acquire the land. The owner of the land can look up to the Government only for payment of compensation.

He has no right or claim against the person for whose benefit the land is being acquired and the statute does not confer any such right on him.

When the owner of the, land don not have any claim, right or concern against, the person fee whose benefit the land has been acquired, how could

ft be postulated that it could be made to fight a legal battle with that person at that latter''s wig and volition. To permit. it would be going against all

canons at jurisprudence, justice and fair play. Likewise Me person fog whose benefit the land has been acquired has no claim or right against. Me

owner of the land as such. Then how could he litigate against him? That is why ibis scheme of Se Act makes only Me owner of the land and the

Government parties to the acquisition proceedings and none else. The local authority or the Company can only assist do Government in adducing

evidence in regard to compensation and nothing else.. ... the person for whose benefit. the WO is proposed to be acquired has no place in do

exercise of the sovereign power by the State. This is the patent reason why the Act has limited the scope of the lis in regard to acquisition between

the owner of the land and the Sovereign State'''.

12. As regards the leave being granted to file an appeal, at page 139, the learned Judges stated the position as follows-

Therefore even if there is anything in the Civil Procedure Code, which enables a person to prefer an appeal with leave of the Court, though not a

party to the proceeding in the court below, that is not applicable to the person for whose benefit the land has been acquired to prefer an appeal

with leave of the appellate court against the award, because the right is

foreclosed under the provisions of the Act. The Act treats such a person as a stranger to the acquisition proceedings with whom the claimant of the land has no concern and has no right in the entire proceedings until the acquisition has been completed

Again at page 140, the legal position was explained as follows-

What emerges from the above consideration is that the person for whose benefit land has been acquired, state University in this case, could not be

a party to the reference even if it applied to be added as one. This is clearly prohibited by the provision; of the Act A per-con, who could not be

made a party to a proceeding in the lower court, could not by any stretch of imagination, be made a party in the appeal against that decision, much

less as appellant. The person for whose benefit land has been acquired is a person excluded from the reference proceed not before court, it must

follow that he cannot prefer an appeal to the High Court either with or without leave of the High Court. Order 1, Rule 10, C. P. C. or the inherent

power of the court u/s 151, C.P. Code cannot be invoked while preferring those appeals to The extent that they are consistent with the

provisions of the Act Thus, on principle and on the statute it can be concluded that the University has neither a right to prefer an appeal nor

has it any locus standi prefer one with leave of the appellate court"".

13. We in respectful agreement with the enunciation of the legal position in the above passages. Whatever has been stated above would apply for a

party being impleaded. We do not, therefore think it necessary to discuss the matter further. We would, therefore hold that the application for

being impleaded at this stage cannot be granted.

14. In the judgment of the Full Bench of the Andhra Pradesh High Court, all the earlier decisions of all the Courts have been reviewed and we do

not think it necessary to refer to all the earlier decisions bearing on the point. There are, however, two decisions (1) of the Allahabad High Court in

The Khurshed Bagh Co-operative Housing Society, Ltd., Lucknow Vs. Smt. Satya Devi and Others, and (2) of the Punjab High Court (learned

single Judge) in The Hindustan Sanitary-ware and Industries Ltd. and Another Vs. The State of Haryana and Others, . In these decisions it has

been held that the person who had to pay the compensation could be impleaded as a party under O. 1, R. 10, C. P. C. in a proceeding before the

civil court u/s 18. The Full Bench has dissented from this view and we agree with the Full Bench on this aspect also.

15. The judgment of this court could only be corrected in the manner envisaged by Section 152, C. P. C. in respect of any clerical error or

arithmetical mistake in the judgment or by recourse to the provisions of Order 47, Rule 1, C. P. C., authorizing the review of a judgment under

certain specified conditions. The present application does not fall under any of these provisions and, therefore, there is no scope for interfering with

or setting aside the earlier judgment. The other applications based on the applicant been impleaded cannot also be granted.

16. The result is that these applications are dismissed. But in the circumstances, of the case, there will be no order as to costs.

17. Petition dismissed.