

(1971) 08 MP CK 0029
In the Madhya Pradesh High Court
Case No : F.A. No. 37 of 1963

Madho Rao

APPELLANT

Vs

Yashwant and others

RESPONDENT

Date of Decision : 21-08-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 12, 18, 18(1), 18(2)
Madhya Pradesh Land Revenue Code, 1959 — Section 158

Citation : (1973) JLI 100

Hon'ble Judges : K.K. Dube, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : N.R. Newaskar, for the Appellant; R.G. Waghmare for respondents Nos. 1, 2 and 4, Dighe for respondent No. 2 and C.S. Chajjed for Siremal, for the Respondent

Final Decision : Allowed

Judgement

K.K. Dube, J.—This appeal preferred u/s 54 of the Land Acquisition Act by Madhaorao is against the award of Third Additional District Judge, Indore, in a reference under the Land Acquisition Act (hereinafter referred to as the Act). The appeal is mainly directed against the legality of the apportionment of the compensation and does not concern itself with the quantum of compensation or the extent of area acquired.

2. The property known as "Waghmare Bada" was acquired for a public purpose. The Land Acquisition Officer determined the compensation at Rs. 30,300 for the entire property which included Inam lands, a building, a well, some hutments and trees. We are here only concerned with a dispute as to apportionment of the compensation in respect of the Inam lands and the building. Madhaorao, appellant did not accept the compensation fixed by the Land Acquisition Officer and applied to him to make a reference u/s 18 of the Act for determination of the compensation by the Court. The Land Acquisition Officer while referring to the

Court u/s 18 (1) of the Act as regards the dispute as to compensation, also referred the dispute with regard to apportionment of the compensation between Madhaorao, Balkrishnarao and Gopalrao. As Balkrishnarao died, his interest was represented by his legal representatives, Yeshwant and Lilabai. It may be stated that neither Balkrishnarao nor Gopalrao had separately applied to the Land Acquisition Officer for a reference to be made as regards either the apportionment of the compensation or adequacy of the amount fixed. Ramchandrarao, who is brother of the present appellant Madhaorao, neither participated in the proceedings before the Land Acquisition Officer nor made any application for a reference to be made to a civil Court for apportionment of the compensation. The following genealogical tree will explain the relationship of the claimants with Madhaorao.

3. All the claimant respondents including Ramchandrarao appeared before the Additional District Judge and disputed the quantum of compensation and claimed apportionment. Though the name of Balkrishnarao appears in the order of the Land Acquisition Officer, there is no mention of Ramchandrarao's name as a claimant for apportionment. The Additional District Judge, Indore, permitted Ramchandrarao to be joined as a party to the proceedings. Madhaorao appellant had challenged the legality of this order before the High Court in a revision. The High Court dismissed the revision holding that Madhaorao would have the right to come up in appeal against the tenability of the claim of Ramchandrarao and that it was not proper to adjudicate upon the rights of Ramchandrarao in the revision as they were being considered by the Additional District Judge. The High Court, therefore, left the matter open and it is now contended by Madhaorao that Ramchandrarao is precluded from laying any claims to the compensation because he had not applied to the Land Acquisition Officer to refer the dispute to Court u/s 18 of the Act. He could not be permitted to be joined as a party before the Additional District Judge in reference for the first time.

4. The appellant Madhaorao has also disputed the tenability of the claim to apportionment by the legal representatives of Balkrishnarao and Gopalrao. He has contended that they are also precluded from raising any claim as to apportionment of the compensation before the Additional District Judge as they had not applied to the Land Acquisition Officer to refer the dispute to a civil Court u/s 18 of the Act. Having failed to do so, the claimants would be deemed to have waived their right to object to the apportionment. It was also contended in the alternative that the other claimants not having objected to the quantum of compensation awarded by the Land Acquisition Officer, even if their claim was tenable, it would have to be limited to the amount awarded by the Land Acquisition Officer and they could not claim apportionment in the enhanced compensation granted by the Additional District Judge.

5. In view of section 30 of the Act, no criticism could be validly made against the maintainability of the claim of the legal representatives of Balkrishnarao and Gopalrao. The Act itself envisages that the Collector could refer a dispute u/s 30

as regards title to compensation and apportionment even though the claimants neglected to make a reference u/s 18 of the Act. The scheme of section 18 and section 30 of the Act came for consideration before their Lordships of the Supreme Court in *Dr. G.H. Grant Vs. State of Bihar*, wherein it was observed :--

There are two provisions, sections 18 (1) and 30, which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By sub-section (1) of section 18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed by sub-section (2) of that section of a person interested who had not accepted the award. Section 30 authorises the Collector to refer to the Court after compensation is settled u/s 11, any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served under sub-section (2) of section 12, must, if he does not accept the award apply to the Collector within the time prescribed u/s 18 (2) to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference u/s 30, for determination of his right to compensation which may have devolved upon him since the award. Whereas u/s 18 an application made to the Collector must be made within the period prescribed by sub-section (2), clause (b), there is no such period prescribed u/s 30. Again u/s 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is u/s 30 not enjoined to make a reference : he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award.

The Collector, having determined the compensation for the land, found a dispute as regards apportionment; he was, therefore, competent to refer the matter suo motu u/s 30 of the Act as regards apportionment between Madhaurao and the legal representatives of Balkrishnarao and Gopalrao.

6. The question that arises for consideration is whether the claim entertained by the learned Additional District Judge as far as Ramchandrarao is concerned is also tenable. It has already been pointed out that Ramchandrarao made his claim for the first time before the Additional District Judge. Sections 18, 19, 20 and 21 confer a special jurisdiction upon the Court and it arises out of an application made to the Land Acquisition Officer by any person interested who has not accepted the award. There can be no reference except at the instance of such a person interested u/s 18 unless it be a reference of a dispute u/s 30 of the Act. Dealing with the special jurisdiction of the Court under the Act in AIR 1930 64

(Privy Council) it was observed by the Privy Council thus :--

Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of the section. It only arises when a specific objection has been taken to the Collector's award and is confined to a consideration of that objection.

If a party has not chosen to apply to the Collector for a reference u/s 18 and if the Collector has not referred the matter u/s 30 of the Act, then the Court hearing the reference would be powerless to entertain any fresh claim and add him as a party to the proceedings. It was, therefore, necessary to refer the question of title to compensation claimed by Ramchandrarao Waghmare and Siremal. They did not seek the assistance of the Collector in that regard. For making a reference u/s 30 of the Act, the powers of the Collector are also not fettered by any limitation. But what they now seek to do is to be made parties in the reference proceedings and claim title to the compensation as against Madhaorao. If it was only desired to support the reference made by Madhaorao, there could be some justification in making them parties to the proceedings. For, in that case, they would be permitted to adduce evidence as regards the value of the land. Now, Ramchandrarao could not be added as a party by Additional District Judge for determining his title to the compensation as this dispute was not referred to him u/s 30 of the Act.

7. The decisions in *Indumati Debi Vs. Tulsi Thahurani and Others*, and *Mohammed Ibrahim Sahib v. Land Acquisition Officer, Bhimavaram* AIR 1953 AP 226 support the view that the parties could not be added to agitate their claim before the Court if the same was not referred u/s 30 of the Act. It was pointed out in the *Calcutta* case that a party could be permitted to be added in a reference if the scope of the reference is not in any way altered ; as for instance, when a trustee of a Wakf property applied to be added as a party to the proceedings with a view to support the claim of Wakf, he was permitted to be joined as a party after taking recourse to the provisions of Order 1, rule 10 of the CPC and this was only for the purpose of permitting him to adduce the evidence as to the market value of the property acquired. No new claim was enquired into and the scope of enquiry was not enlarged. The provisions of Order 1, rule 10 could be availed of to the limited extent bearing in mind that the parties were not setting up a new claim.

8. In *Mt. Sakalbaso Kuer Vs. Brijendra Singh and Others*, reliance was placed on section 53 of the Act which provides that the provisions of CPC applied to all the proceedings before the Court under the Act except and so far as they are not inconsistent with anything contained in the Act. It was, therefore, held that provisions of Order 1, rule 10 could be availed of to add new parties before the Court. With great respect to the views expressed in that case, we are inclined to hold that section 53 of the Act in itself lays down that the provisions of CPC would apply except and so far as they may not be inconsistent with anything contained in the Act. Now, when the Act itself lays down a special procedure for

making a reference, this could not be by-passed by taking recourse to any provisions of the Civil Procedure Code. The special procedure laid down under the Act for raising disputes before Courts u/s 18 and for setting title to compensation and apportionment u/s 30 would prevail and if as pointed out no such dispute was before the Court, it would not be permissible to add new parties raising new disputes. We would agree with the view taken by the High Courts of Andhra Pradesh and Calcutta in the aforesaid cases. In this view of the matter, the claim of Ramchandrarao could not be considered by the Additional District Judge and his remedy, if any, was by a civil suit.

9. We may also advert to the majority decision of the Supreme Court in *Dr. G.H. Grant v. The State of Bihar* (supra). It was observed in para 18 as under :--

The scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act: it is also intended that the disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the persons who are entitled to receive compensation, and there is nothing in section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved.

It is clear from the majority decision that the remedy for setting a dispute as to the title to compensation was provided under the Act by taking recourse to section 18 or u/s 30. If the Collector refused to refer the matter u/s 30, the matter could be agitated in a suit or could be challenged under proceedings under Article 226 of the Constitution.

10. Similarly, the application by Siremal who has raised entirely a new dispute by intervening at the appellate stage cannot be entertained. Siremal, who applied to be joined as a party before the High Court, claims compensation in respect of 73 ft. by 65 ft. land. This entirely new dispute was neither before the Land Acquisition Officer nor before the Additional District Judge. The scope of appeal from a decision of a reference under sections 18 and 30 of the Land Acquisition Act is limited just at the scope of reference itself is limited. The powers of the High Court u/s 54 are in no way greater than the powers of the Court hearing the reference and if the reference could only be confined to matters specifically referred to it, the scope could not be enlarged in appeal. In the referring order by the Land Acquisition Officer, he indicated that there was a dispute regarding apportionment of the compensation between Madhaorao, Balkrishnarao and Gopalrao. He also indicated that these were the persons interested in the land. The order of the Additional District Judge and that of the High Court in appeal, therefore, could not go beyond what was referred by the Land Acquisition Officer. We are of the opinion that for the reasons already discussed, provisions of Order 1, rule 10 of the CPC would not be of any assistance to Siremal for making a claim before us at this stage. We, therefore, reject the application of Siremal for

consideration of his claim as to apportionment.

11. The contention of the appellant that the claim of the legal representatives of Balkrishnarao and Gopalrao should be restricted to the compensation awarded by the Collector is without any force. When the matter as regards quantum of compensation was at large before the Court, the apportionment would undoubtedly be of the compensation finally determined as the dispute referred to by the Collector u/s 30 was for apportionment after the determination.

12. We may now advert to the order of the Additional District Judge, Indore. He fixed the compensation of the entire property at Rs. 2,28,643. He apportioned this amount of compensation in four shares. Out of the share of the compensation for Inam lands, one-third share amounting to Rs. 73,731 was apportioned to the legal representatives of Gopalrao. Similarly, another one-third share amounting to Rs. 73,731 was apportioned to the branch of Balkrishnarao. The remaining one-third was divided equally between Madhaorao and Ramchandrarao. Madhaorao and Ramchandrarao were further given a sum of Rs. 7,450 as compensation for the building to be divided equally between them. The learned Additional District Judge came to the conclusion that Balkrishnarao and Gopalrao had no interest in the building as their interest was purchased by Madhaorao. Therefore, even if there were any rights in the house, by virtue of its being ancestral, such rights were extinguished by purchase of all interests by Madhaorao. This position is not disputed and we are left with the question of compensation in respect of the Inam lands.

13. It is an admitted position that Madhaorao was recorded as the Inamdars of the land acquired. It is also not disputed that the Inam land was impartible and its devolution was according to the rule of primogeniture. The Inam lands in absence of any special terms were to be governed by the Manual for Jagirdars of the Holkar State. The Inam lands for all purposes were treated in the same manner as Jagirs and all rules applicable to the Jagirs applied to Inam lands. By virtue of section 134 of the Manual for Jagirdars of the Holkar State, all rules and regulations laid down in the Manual and applicable to the Jagirs were, in absence of any standing rules or circular, applicable to Inams. By section 3 of the Manual for Jagirdars of Holkar State, 1928, the Jagir was to descend in the order of primogeniture i.e., to the eldest male member in the line of the last holder. By sections 14 and 15 of the Manual, widows, minors and brothers were entitled to maintenance.

14. The learned Additional District Judge came to a conclusion that the claimants and the appellant formed a joint family. The property acquired was ancestral and that no partition had taken place. For coming to this conclusion the learned Additional District Judge relied on the findings in an earlier suit *Sunderbai v. Lt. Col. Gopalpuri Gusai and 4 others* Civil Suit No. 21 of 1927 decided on 26-11-1929 for redemption of mortgage in which Madhaorao, Balkrishnarao and Gopalrao were parties. It was held there that the three constituted a joint Hindu family and no partition had taken place in the family. There is no evidence of

partition after the decision of this mortgage suit. Again in the same mortgage suit it was found by the Court that Balkrishnarao could mortgage his interest in the property and a preliminary decree for sale was passed only as against the rights and interest of Balkrishnarao and Gopalrao. Madhaorao was a minor at that time and the management of the estate was done by Court of Wards. Again when the house was being sold in execution of the aforesaid decree, the interests of Balkrishnarao and Gopalrao were purchased by the Court of Wards. Though the finding in the mortgage suit may not be *res judicata*, there is no escape from the conclusion that the property was ancestral and the house at least was found to be a joint family property. As already indicated, the coparcenary interest in the house, of Balkrishnarao and Gopalrao stood extinguished by the purchase of their interest by the Court of Wards. The position, therefore, boils down to this that the property acquired was ancestral and Madhaorao succeeded to it being the eldest male member of the last Inam holder. The house was undoubtedly held jointly but the interest of Balkrishnarao and Gopalrao was purchased by Madhaorao. The bulk of compensation is in lieu of Inam lands. The question that arises is whether the legal heirs of Balkrishnarao and Gopalrao had any vested interest in the Inam lands to entitle them to apportionment of the compensation. There is no doubt that if the acquisition had not taken place the land would have continued to be enjoyed by Madhaorao like his self-acquired property. The income derived from such land also became his self-acquired property. As long as Madhaorao was alive, the corpus of Inam land vested absolutely in him and after his death, it would have devolved on his eldest son.

15. The respondents contend that the Inam lands were ancestral and though they were subject to the incident of impartibility and primogeniture yet, by reason of these, they did not cease to be ancestral and joint family properties. In any case, it was urged, the incidents of survivorship attached to the incident of impartibility and primogeniture and to that extent they had interest in the property. It was contended that on the findings in the mortgage suit, the Inam lands were also part of the joint family property and once the Inam land was shorn of its characteristics of impartibility and descendibility by rule of primogeniture, all the members of the joint family became entitled to a share in it. By a Governmental action, the Inam land with all its bundle of rights was acquired and the compensation that was paid was not impressed with any of the characteristics of impartibility. The coparceners, therefore, became entitled to a share in the compensation. The contention, however, assumes that the Inam land could be held in coparcenary by the respondents. Support is, however, sought for the contention from a number of decisions of this High Court wherein impartible estates were treated as joint family properties and by a change of tenure, the interdiction as to impartibility was removed, and the coparceners became entitled to have share in the property. Most of these cases turned on facts peculiar to them and not much support could be gathered from them. Most of these cases were examined in *Purushottam Kibe v. Anant Kibe* F.A. No. 91 of 1962; decided on 2-5-1969. The discussion in *Kibe's* case brings out the

distinctive characteristics of the Inam lands.

16. In another Division Bench case of this High Court *Harichand v. Shivchand F.A.* No. 36 of 1961; decided on 23-11-1965 it was observed that if Jagirdari is ancestral property, after abolition of jagirs it would become family property just like any other items of the ancestral property. The Division Bench in this case relied on *Hirondibai v. Goverdhan S.A.* No. 482 of 1952; dated on 24- 2-1957. In this case, u/s 109 of the C.P. and Berar Land Revenue and Tenancy Act, 1917, succession by survivorship was not interdicted. So, though the Theka was impartible if the Theka was owned jointly by a Hindu family, the co-sharers succeeded by survivorship after the Thekedar's death. This view, it was pointed out, fell in line with previous decisions in *Thakur Bhagwansingh v. (sic)* 24 NLR 170 and *Sukhambai v. Ramsaran Doma Sao and others* 195 NLJ 453. This view was again adopted by Shrivastava, J. in *Maniram Maksudan v. Ramdayal Maksudan* 1959 LJ (sic): (sic) MPLJ 829. These cases could hardly be of any assistance for the reason that the Inam land though ancestral would only devolve by applying rule of primogeniture. After the death of Baburao, neither Balkrishnarao nor Gopalrao could succeed by survivorship. Section 3 of the Manual for Jagirdars of Holkar State regulated the devolution. There was no place for the brothers of Baburao in presence of his son even though the Inams were ancestral property. No sooner Madhorao became the Inam holder, it is difficult to see what right Balkrishnarao or Gopalrao will have in the Inam lands. Now, *Harichand*'s case deals with the rights of junior members to claim share in Jagirdari house situated in Jagir village after the abolition of Jagirs. It was held that he could claim such a share. Nothing, however was said in respect of compensation amount payable for the Jagir to the coparceners. This case and most of the cases relied on in *Harichand*'s case came for consideration before the High Court in *Purushottam Kibe v. Anant (supra)*. The Division Bench in that case was dealing with the rights of members of the joint Hindu family in Inam lands. A challenge very similar to the present one was made in that case. It was argued that by passing of the Madhya Pradesh Land Revenue Code, there was a change in the tenure of the Inam lands and the property assumed the character of joint family property without the character of impartibility and primogeniture and, therefore, the members of the family became entitled to an interest in it by survivorship. Repelling these contentions, the Division Bench held that there was nothing in the Land Revenue Code which would warrant such an interpretation. The language of section 158 of the M.P. Land Revenue Code indicated that the Inam-holder became the Bhumiswami of the land. There was no conferral of any right with reference to person who belonged to the joint family of the Inamdar. Therefore, even if the Inam were held a ancestral, the Inamdar alone became the Bhumiswami of the land and there was no obligation to part with his right in favour of any of the members of the joint family. The only right which the other members of the joint family held was a right to put forward their claim as senior member of the family in case of extinction of the line of the Inamdar subject to its being recognised by the Government. We are in full agreement with the

principle laid down in that case and also agree with the reasons given in the judgment distinguishing the reported case, in Smt. Piloni Janakram Vs. Anand Singh Sakham, and Tikaram v. Amolabai 1963 JLJ 611 : ILR 1959 MP 975 : 1961 MPLJ 997 While distinguishing the latter case, it was pointed out that though Thekedari was conferred upon the eldest member of the joint Hindu family and such Thekedari was impartible yet, that did not mean that Sir and Khudkasht land appurtenant to theka belonged exclusively to the Thekedar. Such land was according to the decision the joint family property of the co-sharers of the Thekedar. A family arrangement entered into by the Thekedar with the members of his family could bind him and the position was in no way altered by the Abolition of Proprietary Rights Act, 1951 which conferred upon the Thekedar rights of occupancy in respect of Sir and Khudkasht land. The rights of other members of the family under the arrangement continued and the Thekedar was deemed to have acted on behalf of the rest of the members of the family securing occupancy rights. The position obtaining with regard to Inam lands held under a grant is not the same as a Thekedar. In cases of Inam lands, the other members of the family have no interest except of maintenance subject to its determination by the department dealing with the subject of Jagirs and Inams and that too, as already pointed out, was confined to widows and minors in the family and brothers of the Inamdar for the time being. It would be helpful to site the observations of the Court in Madhavrao and others v. Shivajirao and others F.A No. 32 of 1959 decided on 27-9-1963, The question in that case was regarding the rights in respect of Khudkasht land in a Jagir village after coming into force of the M.P. Abolition of Jagirs Act. It was observed thus :--

The plaintiff's argument seems to be that the moment Jagirs were abolished, and the lands became pucca tenancy, they also became joint family property. If by this is meant that they became joint family property of Shivajirao and his sons, there is something to be said in support of the contention. But the argument is that the position reverts to two generations backwards as if Shivajirao's grand-father Krishnarao had got these lands as joint family property. Fantastic as this argument is, support is sought from some reported cases which are not really analogous. For example, in Maniram Maksudan v. Ramdayan Maksudan, the Court was dealing with some "Thekedari" lands which were joint family property from the very beginning. There was a ban against partition and when it was removed, the Court held that they became partible. It was difficult to see what analogy there lies with these lands which at no earlier time were partible.

We wholly agree with the view, as in the present case also we do not see how the interest which was wholly absent in the Inam lands which had lapsed when succession opened after the death of Baburao could resuscitate when the Inam lands themselves were extinguished. The Inam lands constituted a special kind of grant and unless expressly provided in the grant, the other members of the family at no time had any right as against the Inamdar except as already pointed out of maintenance to a very limited extent. Therefore, there was no right which

Balkrishnarao and Gopalrao could claim in the Inam land. There could be no right which they could assert in the compensation for such land.

17. The position that emerges out is that the respondents had no interest in the Inam land by birth and had no right to partition having regard to the impartible nature of the land. There is no evidence of any right of maintenance in their favour. The Manual for Jagirdars of Holkar State provided for maintenance to brothers of the Inam holder and widows and minors. But this right was subject to a proper order by the Jagir Commissioner and there is no order providing for maintenance to any one. The Inam land could not be held in coparcenery as joint family property. The respondents had no present interest in the impartible estate. The Inam land though an ancestral joint family property yet in the hands of Inamdar was clothed with the incidents of self acquired and separate property. For the purpose of devolution of property it was governed by section 3 of the Manual for Jagirdars of Holkar State and even if it is held that the Inam land devolved on Madhorao as joint family property the only right which a member of the joint family property acquired by birth was to take the property by survivorship in the order indicated in section 3 irrespective of the fact that the member succeeding was joint or separate. What is important is that no member acquired any interest in the property itself. Even the right to take property by survivorship in the case of Balkrishnarao and Gopalrao who are uncles would be too remote in presence of lineal male descendants like sons and brothers of the Inam holders. If at the time of acquisition, the respondents had no interest in the Inam land they could claim no share in the compensation. The argument that when the property lost its character of impartiality it became partible amongst the members of the joint family was repelled by their Lordships of the Supreme Court in *Sri Rajah Velugoti Kumara Krishna Yachendra Varu and Others Vs. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu and Others*, and would not be tenable in the instant case.

18. We are, therefore, of the view that the legal representatives of Balkrishnarao and Gopalrao could claim no share in the compensation of the Inam land or the house. We have already indicated that we cannot consider the claim of Ramchandrarao in this appeal. We cannot also consider the claim of Siremal who sought intervention before the High Court.

19. In the result, we allow the appeal of Madhorao and set aside the order of the Additional District Judge as far as apportionment of the share to the legal representatives of Balkrishnarao and Gopalrao is concerned. We also set aside the claim of Ramchandrarao. The appeal is thus allowed with costs. We, however, determine the counsel's fee at Rs. 250, if certified.