

(1972) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Civil Revision Application No. 1217 of 1971

Mahauva Municipality, Mahuva

APPELLANT

Vs

Mehta Kiritkumar Umedchand and Others

RESPONDENT

Date of Decision : 22-02-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Land Acquisition Act, 1894 — Section 11, 3

Citation : AIR 1973 Guj 97

Hon'ble Judges : J.M. Sheth, J;C.V. Rane, J

Bench : Division Bench

Advocate : Ramesh A. Mehta, for K.G. Vakharia, for the Appellant; H.P. Sompura and G.M. Vidyarthi, Asst. Government Pleader, for the Respondent

Judgement

J.M. Sheth, J.—This revision petition raises an interesting question, as to whether the acquiring body for whose benefit the land which is proposed to be acquired under the Land Acquisition Act, 1894 (which will be hereinafter referred to as "the Act") is necessary or a proper party in the suit filed by a person interested in the land challenging the validity of the acquisition proceedings stated by the Government. The trial Court has held in Special Civil Suit No. 43 of 1971, in which this question arose for decision, against the Mahuva Municipality, the acquiring body (petitioner). The petitioner-municipality has, therefore, come in revision against that order, dated 8th July, 1971, passed by the learned Civil Judge, Senior Division, Bhavnagar, in that suit below Ex. 14.

2. The learned Chief Justice who issued "rule", has ordered this revision petition to heard by a Division Bench as two single Judge of this Court in two different revision petition have taken different views.

3. Mr. R. A. Mehta, appearing for Mr. K. g. Vakharia, for the petitioner, has urged that the acquisition proceeding in question were stated at the instance of the petitioner-municipality. In the plaint, allegation were made by the plaintiff (opponents Nos. 1 to 4) against the petitioner. The land was sought to be

acquired of the purposes of the said Municipality of its Nutan Nagar Scheme No. 2. It is, therefore, submitted by Mr. Mehta that the petitioner is vitally interested in the result of the suit. It was urged by him that the petitioner was a necessary party or at any rate, a proper party, and consequently, the trial Court was not justified in refusing to add it as a party to the suit. he also invited our attention to the agreement which the local authority is required to enter into with the Government when such proceeding are stated at the instance of a local authority. That form of an agreement has been referred to in extensor in the Manual of Land Acquisition for the State of Gujarat, written by Anderson, 1971 edition, page 103 and 104. That agreement indicates that the costs of such acquisition are to be borne by the local authority. Mr. Mehta has laid considerable emphasis on the latter part of this agreement, which reads:

"..... And the Governor both hereby agree with the Municipality that as soon as all costs and charges of the said acquisition shall be paid by it would recovered from it as aforesaid, the said land together with the trees, houses and other things standing thereon or attached thereto, or permanently fastened to anything attached thereto, shall vest in the Municipality and be thenceforth held by it for the purposes of the municipal Act like any other property vested in the Municipality u/s 50/63 of the Municipal Act (free of all claim of charges whatsoever on the part of the Government)".

Relying upon this part of the agreement, it is submitted by Mr. Mehta that this land which is the subject-matter of acquisition is ultimately to vest the municipality, the moment it pays the costs and charged of the said acquisition or such costs or charges are recovered from it. In support of his arguments, he had invited our attention to two decision of the Supreme Court and one decision of the Allahabad High Court.

4. Mr. Vidyadrthi, learned Assistant Government pleader, appearing for opponent No. 5 State of Gujarat, as well as for opponent No. 6 Special Land Acquisition Officer, supported the contentions urged on behalf of the petition and further urged that it was not necessary that the petitioner's right should have been violated. The element of indicia of legal injury or pecuniary loss which such a person or entity may suffer, was sufficient to conclude that such a person or entity was a proper party. It was submitted by him that it is the petitioner which will have ultimately to bear the costs of the acquisition proceedings. It could, therefore, be said that that body would suffer legal injury or at any rate pecuniary loss. He also invited our attention to the provisions of the Section 50 of the Act and urged that such a local authority in view of the amendment introduced by Section 23 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963, was a proper party to the proceedings. It was included in any proceeding held before a Collector or Court in such cases to issue notice to such local authority calling upon to appear and adduce evidence, if any, for the purpose of determining the amount of a compensation. In a proceeding like the present proceeding where the validity of the acquisition was under challenge, it

should have a large eight a and it should, therefore, be concluded that such a local authority was proper party to the proceedings.

5. In reply to these arguments, Mr. Sompura, appearing for opponents Nos. 1 to 4 (plaintiff) has urged that in view of the provisions contained in Section 3 of the Act, defining the expression "person interested" in Section 3(b) of the Act, it cannot be said that the acquisition body of whose benefit the land is proposed to be acquired, is falling within the definition of the expression "person interested" in that section. He has further urged that even when the compensation amount was to be determined in which such an acquiring body would be naturally vitally interested, the legislature has given a very limited, the legislature has given a very limited right and a Division Bench of the Court had in terms stated that it is not a necessary or proper party to the proceeding. Relying upon certain observation made by the Supreme Court to which we will make reference at an appropriate stage, he has urged that in such a suit relating to property, mere commercial interest is not sufficient. The interest must be an interest which is recognised by law. In the instant case, Mr. Sompura submitted, the interest of the acquiring body was not the interest recognised by law and consequently, the said Court was fully justified in refusing to add the petitioner as a party. It was submitted by Mr. Sompura that the act complained of, was the act of the Government, Relief sought was against the Government. Simple because some allegation were made against the municipality, that the municipality influenced the decision of the Government, the municipality cannot be said to be a necessary party or a proper party. He also invited our attention to other decision wherein it is observed that such a person cannot be added as a party when the plaintiff opposes the addition of such a party.

6. In our opinion, on examining the question that is posed before us from all points of view, submissions made by Mr. Mehta and Mr. Vidyarthi are not well founded submissions. Submissions made by Mr. Sompura are well founded submissions.

7. Before we advert to the relevant provisions of the Act as well as refer to the authorities cited at the Bar, we first prefer to refer to the decision of two single Judge of this Court wherein conflicting views have been expressed.

8. A. D. Desai, J., In Civil Revn. Applns Nos. 117 of 1970 and 118 of 1970, decided on 16-7-1970, after referring to the relevant provision of Order 1, rule 10 of the Civil Procedure Code, has observed in this behalf as under:

"The application were made by the Gujarat Housing Board under Order, 1 rule 10 of the CPC which gives a discretion to the Court to join any person as a party to the suit in cases where such a person ought to have been joined or where presence of such person is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the case. The learned trial Judge came to the conclusion that the Gujarat Housing Board was a proper party of the suit because there were allegations in the plaint to the

effect that the activities of the Gujarat Housing Board was joined as a party needless multiplicity of the suit will be avoided. It is also observed by the learned trial Judge that the plaintiff was not likely to be prejudiced in any way if the Gujarat Housing Board was joined as a defendant in the suits. Now, there is no dispute before me that the Gujarat Housing Board is not a necessary party. The question is whether the Gujarat Housing Board is a proper party to the suit or not. What the Court has to see is whether the question which arises in the suit can or cannot completely and effectually be adjudicated without the presence of a party which claims to be a proper party. The Court has to determine whether the relief claimed in the suit affects the intervenor in the enjoyment of his rights. In cases where notifications of acquisition are issued under the provision of the Land Acquisition Act, the public body for which the lands are being acquired, gets an interest in the lands unless and until the acquisition proceedings are finalised. In the present case admitted the acquisition proceedings are not finalised and, therefore, it is clearly that the intervenor had no right in the subject-matter of the suits. It is true that the allegations have been made that the activities of the Gujarat Housing Board are in the nature of business activities, but merely for that reason it cannot be said that the question arising in the suit cannot be completely and effectually decided without the presence of the Gujarat Housing Board. It is difficult to understand how there would be multiplicity of suits as the acquiring body gets an interest in the suit lands till the acquisition is over and once the acquisition is final there can be no suit in respect of the validity of the acquisition proceedings. The question as to whether the other party to the suit is likely to be prejudiced by some allegations made in the plaint or not, is not a material factor to be considered. In the present case the Gujarat Housing Board has no right or interest in the enjoyment of the suit lands and the presence of the Gujarat Housing Board is not necessary for completely and effectually deciding the suit".

If we now refer to the definition of the expression "person interested:" given in Section 3(b) of the Act, it reads:

"the expression "person interested" includes all persons who claim an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land".

It therefore, clearly means that such an acquiring body for whose benefit the land is proposed to be acquired by the Government cannot be said to be a "person interested" within the meaning of the expression given therein.

9. Order 1. Rule 10 sub-rule (2) of the Civil Procedure Code, which is material for our purposes, reads:

"The Court may at any stage of the proceedings, either upon the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or

defendant, be struck out, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon the and settle all the question involved in the suit be added".

The first portion which is underlined by us, deals with the question regarding addition of the person who s to have been joined, whether as plaintiff or defendant, it contemplates a case of the person to be added as a necessary party. It is conceded before us that the petitioner cannot be said to be a necessary party. We are, therefore, left with the question, whether it could be said to be a proper party,. The latter portion underlined by the us deals with the question. The question that is posed for answering, is whether the presence of the petitioner is necessary in order to enable the Court effectually and completely to adjudicate upon the settle all the question involved in suit? In our opinion, it cannot be said that its presence is necessary for enabling the Court effectually and completely to adjudicate upon the settle all the question involved in the suit.

10. It will be proper at this stage to refer to the averments made in the plaint itself and see whether the petitioner's presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the question involved in the suit. No relief is claimed in the plaint against the petitioner. The act which is under challenge is that act of the State Government. This is the act complained of Para 17 of the plaint, which is a relief Clause refer to paras 6, 7, 8, 9, 10, 11, and 12 in support of the plaintiff's contention that these acquisition proceeding are illegal, unauthorised, unconstitutional and unenforceable, null and void. In short, the validity of the acquisition has been challenged on these grounds. The land in question is survey No. 277 admeasuring 10 acres, 3 gunthas, situate in Mahuva, District Bhavnagar. In para 6, reference is made to the notification issued by the State Government u/s 4 of the Act on 5-12-1958 and the notification issued u/s 6 of the Act on or about 19-8-1959. The ground mentioned therein after for the purposes of challenging notification have nothing to do with any of the acts of the local authority,. In para 7, the grievance made is that the special Land Acquisition Officer had unauthorisedly called for the remarks of the Mahuva Municipality after the issuance of the notification u/s 4 of the Act, and keeping the plaintiff in dark that officer had made a report that these lands are required for Nutan Nagar Scheme No. 2, and the Govt., also, without applying its mind and without taking into consideration all the propose and cons, issued a notification u/s 6 of the Act. Therefore certain steps have been taken u/s 9 and 11 of the Act without any issue of notice to the plaintiff. In para 8. also similar grievance has been made. Some grievance is also made against Scheme No. 2. In Para 9, the allegation regarding the fraud has been made . In para 10 also, grievance is made that the proceeding have not been regularised according to law. In para 11, it is stated that their act of the Govt., is illegal, unauthorised, null and void. Mahuva Municipality is trying to the taken over possession and that is why without giving

statutory notice, this suit has been filed urgently. In para 12, also it is stated that the Government has taken irrelevant factors into consideration and there has been a long delay.

11. It is thus evident that it is the act of the Government that is complained of, and the validity of the acquisition is challenged on that ground. Mr. Mehta invited our attention to the averment made in para 5 of the plaint. It is stated therein by the plaintiff that their father and the persons of Dashashrimali community were taking leading part in Mahuva politics and they had taken leading part in the Congress (O) and are taking it for the last many years. Mahuva Municipality is controlled by Praja-Socialist party and the management of this local authority has remained in the hands of the leaders of that party. For the political reasons, to harass the plaintiffs, they have used their political influence with the Government and the Government has consequently taken illegal steps to acquire this land without following the procedure prescribed by law. In collusion with these municipal leaders, through their officers, the Government has mis-used its powers.

12. It is significant to note that this is not a case whether power under local authority to acquire the properties is under challenge. It is the act of acquisition taken by the Government that is under challenge. In our opinion, there is no question involved in such proceeding for settlement of which it can be said reasonably that the presence of this local authority before the Court is necessary.

13. It is significant to note the provisions of Section 16 of the Act at this stage, which reads:

"When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in Government free from all encumbrances".

It is only when possession is taken by the Government as contemplated by S. 16 of the Act that the property vests in the Government free from all encumbrances, and it is only thereafter that in view of the agreement to which our attention is invited by Mr. Mehta, on payment of the costs and charges of the acquisition, the property will vest in the local authority. Till then it cannot be said that the local authority has any interest in the property in question.

14. It will be proper at this stage to refer to the decision of our learned brother S. H. Sheth, J in Civil Rev. Appln No. 740 of 1971, decided on 10-9-1971, wherein it appears that he has taken a contrary view. The acquiring body in that case was Ramceshwar Co-operative Housing Society. That society made an application to the trial Court for being joined as defendant to the suit, alleging that it was interested in the suit because the land was acquired by the State of Gujarat for it. The trial Court ordered the society to be joined as defendant No. 2 to the suit, as a proper party. It was that order that was under challenge in that revision petition. At the outset our learned brother S. H. Sheth, J., has observed;

"Whether a society for whose benefit the State acquires a land is a proper party or not is not a question which relates to the initial jurisdiction of this Court. In the facts and circumstances of this case. I do not think the impugned order made by the trial Court can be revise u/s 115 of the Code of Civil Procedure".

No doubt, thereafter, he has considered the merits of the case and has come to the conclusion that the society was a proper party. He has referred to the allegations made in the plaint, which were as under:

"That the owner and the members of the proposed society had entered into Banakhat to purchase the said land and as they failed to get the possession from the plaintiffs and, therefore, they have used the machinery of the Government for acquiring the suit land and, therefore, also the proposed acquisition is illegal and mala fide."

After referring to those averments, it is observed:

"The allegation of having the made an illegal and mala fide acquisition is indeed directed against the State. However, one of the circumstances which the plaintiff seek to marshal in order to substantiate that allegation relates to what happened at an earlier stage between them and the society. Next, Section 3(e) of the Land Acquisition Act, 1894 which defines "Company" includes a 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 any State. Rameshwar Co-operative Housing Society Ltd., -- opponent No. 2 to this petition -- is a society registered under the Gujarat Co-operative Societies Act. It is, therefore a "company" within the meaning of the definition given in Section 3(e) of the Land Acquisition Act"..

He then refers to the provisions of section 41 of the Act and observes:

"..... the State Government shall require the Company to enter into an agreement with it inter alia providing to its satisfaction for the following matter, namely, (1) the payments to the Government of the cost of the acquisition. In the instant case, the land has been acquired by the State Government for the been purpose of the society so as to enable the society to construct bungalows for its members. I think that purpose is covered by CI. (b) of sub-section (1) of section 40. If in the absence of the society the plaintiff succeed in their suit the society will be liable to pay to the State Government the costs of the litigation and all other costs which the State Government might have incurred for acquiring the land in question. These costs to which I have referred are a part of "the cost of acquisition" within the meaning of sub-section (1) of section 41. Therefore, success of the plaintiffs in the suit will subject the society to the aforesaid costs. Since. the society had incurred that liability, in my opinion, the society should be joined as a defendant to the suit". These are the reasons mentioned by our Learned brother S. H. Sheth, J., for coming to the conclusion that the society is a proper party. When the decision of our learned brother A. D. Desai, J., to which we have already made reference, was brought to his notice, it

is observed by him that that decision lays down no principle and is only applicable to the facts of that case. With the greatest respect, we may say that our learned brother A. D. Desai, J., has laid down the requisite tests and has laid down the principle in the decision given by him.

15. It thus appears from the aforesaid two decisions of the Single Judge of the Court that there is conflict in the views expressed.

16. In the majority judgment in *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, the Supreme Court has reviewed several authorities in this behalf and has laid down the correct position of law. At page 895, in para 13, the Supreme Court has summarised its conclusion observing:

"As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under Rule 10 of Order 1, of the Code of Civil Procedure, is generally not one of the initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may give rise to controversies as to the power of the Court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code;

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation.

(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

(4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Sections 42 and 43 of the Specific Relief Act."

In the instant case, we have to decide the question which arises in a suit relating to property. In view of this Supreme Court decision, therefore, the petitioner can be added as a party, if it can be said that it has direct interest as distinguished from a commercial interest in the subject-matter of the litigation. The subject-matter of the litigation in the instant case is not a declaration as regards status or legal character, wherein the rule of present or direct interest can be relaxed as has been observed by the Supreme Court. The Supreme Court in that case had to deal with a question of status. It affected not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest', as evolved by case law relating to disputes about property did not apply with full force.

17. It is observed at pages 889 and 890, after referring to the provisions of sub rule (2) of Rule 10 of Order 1 of the Civil Procedure Code, as under:

"..... But it was contended on behalf of the appellants that whether the narrower or the wider view of the interpretation of sub-rule (2) of Rule 10 of Order 1 of the Code of Civil Procedure, is taken, the result, so far as the present controversy is concerned, would be the same. In the leading case of 1892 1 Ch. 487 *Lindley, L. J.*, has held that a party who is not directly interested in the issues between the plaintiff and the defendant, but is only indirectly or commercially affected, cannot be added as a defendant, because the Court has no jurisdiction, under the relevant rule, to bring him on the record even as a "proper party". That was a suit to restrain the alleged infringement of the plaintiff's patent by the defendant, Marsden. The Court held, reversing the order of the trial Judge, that the party sought to be added had no direct interest in the subject-matter of the litigation, and all that could have been said on behalf of the party intervening was that the judgment against the defendant would affect his interest commercially. The Court distinguished the previous decision in *Vavasour v. Krupp* (1878) 9 Ch D 351 and *Appollinaris Co. Ltd. v. Wilson* (1886) 31 Ch d 632, on the ground that in those cases, the litigation would have affected the property of the person not before the Court. This leading case of 1892 1 Ch 487 is clearly an authority for the proposition that the Court has jurisdiction to add as a party defendant only a person who is directly interested in the subject-matter of the litigation and not a person who will be only indirectly and commercially affected."

It is further observed at page 490;

"..... To the same effect is the decision in *Re I. G. Farbenindustrie A. G. Agreement* 1943 2 All ER 525. The Court held that in order that a party may be added as a defendant in the suit, he should have a legal interest in the subject-matter of the litigation -- legal interest not as distinguished from an equitable interest, but an interest which the law recognizes. Lord Greene, M. R., giving the judgment of the Court, also observed that the Court had no jurisdiction to add a person as a party to the litigation if he had no legal interest in the issue involved in the case. In the case of *ILR 5 Mad 52*, in which the wider view of the interpretation of the relevant rule, was taken, *Turner, C. J.*, delivering the judgment of the Court, observed that the wider interpretation which enabled the Court to avoid conflicting decisions on the same question and which would finally and effectually put an end to the litigation respecting it, should be adopted. But in that case also, the party added as defendant, was interested in the subject-matter of the litigation, though there was no impediment to the Court determining the issues between the parties originally before the Court. The learned Judge, on a discussion of the English and Indian cases on the subject, came to the conclusion that a material question common to all the parties to the suit and to third parties, should be tried once for all. He held that to secure this result, the Court should not inflict injustice upon the parties already on the

record, in the sense that they would be prejudiced in the fair trial of the questions in controversy." In our opinion, by joining the petitioner as a party, the plaintiffs are likely to be prejudiced in the fair trial of the questions in controversy." As said earlier, presence of the petitioner-municipality is not necessary for effectually and completely adjudicating upon and settling all the questions involved in the suit.

18. In *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, , the view expressed, does not run in any manner counter to our conclusion. It is observed :

"The law as to who are necessary or proper parties to a proceeding is well settled. A necessary party is one without whom no order can be made effectively; a proper party is one in which absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

The question posed for decision before the Supreme Court was, whether persons whose favour the tribunal has passed an order, were necessary parties in the writ filed challenging that order of the Tribunal.

19. In *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, , which is relied upon by Mr. Vidyarthi in support of his argument, at pages 1798 and 1799, in para 20, the Supreme Court has observed;

"It was urged before us that the State Government was not entitled to acquire property from A and give it to B. Reliance was placed on the decision of the Supreme Judicial Court of Massachusetts (204 Mas. 607). but as pointed out by this Court, public purpose varies with the time and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good."

This decision only lays down as to what the expression "public purpose" connotes. It has no bearing on the question posed before us.

20. A Division Bench of the Allahabad High Court in *The Khurshed Bagh Co-operative Housing Society, Ltd., Lucknow Vs. Smt. Satya Devi and Others*, , has made certain observations in para 8 of the judgment at page 428 which does lend support to the arguments advanced by Mr. Mehta. It is observed therein:

"In the instant case the land is being acquired for the appellant and, as stated earlier, the appellant has already entered into an agreement with the State

Government and has deposited the requisite amount in that regard. There can, therefore, be no doubt that the appellant-society is interested in the acquisition of the land and as such is a proper party within the meaning of Order 1, Rule 10, sub-clause (2) inasmuch as its presence before the Court is necessary in order to enable it to effectual and completely adjudicate upon and settle all the questions involved in the proceedings."

The learned Judges of the Allahabad High Court have not mentioned any reasons and have not given any data in support of their conclusion. We have to keep in mind, in view of the aforesaid Supreme Court decision, that the interest of such an acquiring body must be the interest of such an acquiring body must be the interest which is recognised in law, as we are dealing with a suit relating to property and not with a suit seeking a declaration as regards any status or legal character as contemplated by Section 34 of the new Specific Relief Act.

21. In *Fateh Raj and Another Vs. Suraj Roop and Another*, , Jagat Narayan, J., after referring to the decision in *Amon v. Raphael Tuck and Sons Ltd.*, 1956 1 All ER 273, made the following pertinent observations at page 253 :

"In the above decision a note in the Annual Practice, 1955 at page 232 is reproduced which runs as follows:

` Generally speaking intervention can only be insisted upon in three classed of cases, namely (A) In a representative action where the intervener is one of a class whom plaintiff claims to represent. The intervener may say, "deny that plaintiff represents me-add me as a defendant " (B) where the proprietary rights of the intervener are directly affected by the proceedings (C) In action claiming the specific performance of contracts where third persons have an interest in the question of the manner in which the contract in the question of the manner in which the contract should be performed".

22. (A) and (C) can have no application to the present case. The applicants have not succeeded in proving that they fall under (B).

22A. The learned Judge observed in the above case---

"In do not, with deference to those who have though otherwise, agree that the main object of the rule is to prevent multiplicity of action, though it may incidentally have that effect. The Court has other ways of doing that which the amply sufficient for the purpose--by ordering consolidation..... The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party"".

The ratio laid down therein is that it is the legal interest in the subject-matter of the suit which is to be considered and not that a person may be interested in the suit of the proceedings.

23. It is observed therein:

"No one can open doors and windows on Khalsa land as of right. Khalsa land means the land belonging to the State. The State has the same rights over its land as any private owner. The applicant have thus failed to show that they have any legal interest in the subject-matter of the suit. In other words, they have no shown that if the plaintiff of the suit is granted the relief claimed by him, the legal rights of the applicants will be directly affected. It appears that the applicants want to be impleaded in the suit merely with the object of enabling them to see that it is properly defended".

It has been held in the aforesaid All England Report that the applicants cannot be impleaded as defendants for such a purpose.

24. In *Banarsi Dass v. Panna Lal*, AIR 1969 Punj and Har 57, R. S. Sarkaria, J., has observed:

"Under sub-para (2) of Order 1, Rule 10 a person may be added as a part to a suit in two cases only, i.e. when he ought to have been joined and is not so joined, i.e. when he is a necessary party, or, when without his presence the question in the suit cannot be completely decided. There is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantively in issue in the suit into which he seeks intrusion. A person may not be added as a defendant merely because he would be incidentally affected by the judgment. (1882) 1 Ch 487 (to which we have already made reference) has been followed".

It is further observed therein:

"As a rule the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litis. He is the master of the suit. He cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief".

In our opinion, these two decisions lay down the correct ratio.

25. Mr. Sompura has also invited our attention to the decision of the Supreme Court in *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, , at page 1750, it is observed in para 12:

"The test always must be, is the addition of the party necessary to make adjudication itself effective and enforceable? In other words, the test may well be, would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited".

In our opinion, that decision has not direct bearing on the question involved before us as the Supreme Court had to deal with a question regarding the effect

of the power implied u/s 18(3)(b) of the Industrial Disputes Act, 1947.

26. In our opinion, the view taken by our learned brother A. D. Desai, J. in Civil Revision Application Nos. 117 and 118 of 1970, decided on 16th July, 1970, is the correct view and is supported by the Supreme Court decisions referred to by us earlier.

27. The unreported decision of the Supreme Court in the Municipal Corporation of the City of the Ahmedabad v. Chandulal Shamaldas Petal, Civil Appeal NO. 1716 of 1967, decided on 8-1-1970 (SC), lends support to our conclusion to some extent. In that proceedings, certain lands belonging to the first respondent were notified for acquisition u/s 4 of the Act by the Government of Bombay. The area in which the lands were situated having thereafter been allotted to the State of Gujarat, the Divisional Commissioner of the State of Gujarat has issued a notification u/s 6 of the Act on 2nd May, 1961. These notification were challenged. The Municipal Corporation of the City of Ahmedabad which was the forth respondents in the that petition, appealed to the Supreme Court. A preliminary objection was taken that the Corporation cannot be said to be a person aggrieved by the order, it having no interest in the subject-matter of the proceeding. That contention was upheld by the Supreme Court observing:

"The Municipal Corporation was impleaded as the fourth respondents before the High Court but no relief was claimed against the Municipal Corporation. The property, it is true, was notified for acquisition by the State Government for the use of the Municipal Corporation after it was acquired by the Government, but that, in our judgment, did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court allowing the petition. Substantially the grounds on which the petitioner was filed were that the Notification were invalid on account of diverse reasons. Some of these reasons have been upheld and some have not been upheld : but all those grounds related to the validity of the Notifications issued by the Government of Bombay and the Government of Gujarat. Not even an order of costs has been passed against the Municipal Corporation of the City of Ahmedabad. We fail to see what interest the Municipal Corporation has, which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the respondent". In our opinion, this decision lends support to our conclusion that the acquiring body cannot be said to have any interest in the subject-matter to the suit. Merely because the petition-municipality may have to pay costs to the Governments in case the acquisition proceedings are held to be invalid, or the Government in pursuance of the agreements, is entitled to recover those costs from the Municipality, it cannot be said that the Municipality has interest in the subject-matter of the suit or has got such interest which the law and recognised and consequently, it can be said to be a proper party to the suit.

28. It is significant to note at this stage that even in case of an inquiry made u/s 11 of the Act for determination of the compensation amount, the acquiring body has been given only a limited right by the legislature. Even after the amendment

made by Section 23 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963, where under duty is cast upon a the Land Acquisition Officer or the Court to issue a notice, the position has remained the same. Such acquiring body has been given a right to appear and adduce evidence, if any, for the purpose of determining the amount of compensation. The proviso to that Section 50 of the Act reads:

Provided that no such local authority or Company shall be entitled to demand a reference u/s 18".

This Section 50 falls in Part VIII which relates to "Miscellaneous Matters". The scheme of the Act clearly indicates that no other right has been conferred upon such acquiring body. It is only by the provisions contained in Section 50 that a limited right is given. For the purpose of illustration, we can refer to Section 5-A of the Act. It does not indicate that the acquiring body has been given any right of being heard while considering the objection raised by the person interested against the acquisition.

29. A Division Bench of this Court, in *Khimchand Parshottam Vs. Shah Bhupatray Nathalal and Others*, had to deal with the provisions of Section 50 of the Act, and deal with a question, whether such acquiring body can be said to be either a necessary or a proper party to a proceeding. No doubt, it should be borne in mind that it was in relation to a reference proceedings made u/s 18 of the Act and not in relation to a suit proceeding, as is the case with us. At page 488, in para 8, N. G. Shelat, J., speaking for the Division Bench, has observed:

"Even if the provisions contained in the CPC were available to the Board, Order 1, Rule 3 of the CPC would not apply to call such Local Authority as a necessary party to the proceeding for the reason that only those persons can be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of act or transaction is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise. There is no right to relief against this Board under the Act. The compensation has to be paid by the collector and the land acquired has to be taken possession of also by the Collector. The award has to be passed against the Collector and in no case against any such acquiring body. Similarly the Board can hardly be called a proper party as contemplated in Order 1, Rule 10 of the Civil Procedure Code. The provision entitles the Court to strike out or join any person as plaintiff or defendant if it thought that the name of the any such person ought to have been joined or whose presence before the Court was considered necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the same. The same consideration would also arise and since no award can be passed against it or that it would not be entitled to file an appeal against any such award under the Act, it would not be even a proper party without whose being on record, Court cannot decide the matter completely. The Board has been given merely a right to adduce evidence in support of the

collector who represents the State which acquires the property for the local authority. In our view, therefore, even if provisions of CPC were to apply and the application be so made, we think that the Board is neither a necessary nor a proper party to the proceedings as a party defendant in any suit"..

At page 491, it is observed:

"..... The Collector represents all the interests, viz. of the State as also for any such acquiring body which whose funds and for whose benefit any land is acquired".

At page 492, after referring to Section 11 of the Act, it is observed:

"..... It is by virtue of an agreement between the local authority such as the Housing Board in this case, and the Government that on being satisfied about the requirements of any such corporate body that it would initiate the enquiry towards the acquisition of any such lands. All that can come in Chapter VII of the Act and it is thereafter u/s 50 that such Local Authority or Company for whom and such land is acquired is given a right to appear and adduce evidence for the purposes of determining the amount of compensation. We may at this stage refer to Section 54 which provides for appeals in proceedings before Court and there also on other person except the person interested as we pointed out there above or the Collector as the file case may be, would become entitled to file appeal against the award passed u/s 26 of the Act by any Court. It would, thus, appear that at no stage down from the time when the proceeding are initiated, till stage of appeal, any such Local Authority such as the one in these cases comes in as a party to the proceedings so as to enable any Court to pass any order against it".

At page 494, the Division Bench has referred to the decision of the Bombay High Court in Corporation of the City of Nagpur Vs. Narendrakumar Motilal and Others, , and accepted the correctness of the view expressed therein that the applicant-Corporation was not a person interested in compensation within the meaning of Section 18 of the Act, and was, therefore, no entitled to move an application for making reference. It is further observed therein:

"..... The matter was taken to the High Court and after considering. the scheme of the Act it was held that tin every case of acquisition, it is only the Local Government that can acquire land, and for every acquisition , compensation has to be paid. A perusal of Part V of the Act indicates that the duty to pay compensation is solely that of the Local Government. Therefore, in the entire proceedings from the time of the issue of the notification u/s 6 till the payment of compensation, the parties interested in the acquisition are in law the owner of the property and Government who acquires the property. Then it has been observed that on doubt Government acquires property on behalf of an individual company or statutory corporation, but having regard to the scheme of the Act it does not appear that these parties can become parties to the proceedings except to the limited extent indicate in Section 50(2) of the Land

Acquisition Act. Going further it has been observed that the only parties who may be so to be interested in the payment of compensation are the Government which alone can legally acquire the land, and of course the owner whose land is being acquired. It further held that Section 50(2) cannot be construed to enlarge the right of the Local Authority or Corporation beyond the right expressly mention therein, namely, to appear and adduce evidence and for the purpose of determining the compensation. The Local Authority or Company do not by virtue of the right become parties to the acquisition proceedings. Later on, the words "claiming an interest in compensation" in Section 3(b) of the Act were held to be limited to the person who pays the compensation under the Act, namely, the Government, and in any event, it cannot include within that expression the person from whom the acquisition is being made".

Lastly at page 495, it is observed:

"..... It would thus appear that having regard to the definition of the expression "persons interested" in Section 3(b) and taking into account the scheme of the Act as a whole, much though the funds for acquisition of the land were to be paid by them, they cannot be said to be persons interested as to claim any right to have a reference made or to have any appeal filed against any such award passed by the Court. They are not recognised under the Act as parties to the proceedings".

In our opinion, our conclusion is reinforced by the aforesaid observations made by the Division Bench of this Court while interpreting the provisions of Section 50(2) of the Act. When the legislature has given such a limited right to such acquiring body, when the question regarding compensation is being determined, in which such acquiring body would be vitally interested, it can hardly be said that the legislature intended to give any such right to be added as a party to the proceeding when such acquisition proceedings are challenged on the grounds stated by us earlier.

30. We are, therefore, of the opinion that the trial Court has rightly come to the conclusion that such an acquiring body is neither a necessary party nor a proper party in such proceedings. We prefer the view taken by A. D. Desai, J. in Civil Revn. Applns. Nos. 117 of 1970 and 118 of 1970. decided on 16-7-1970 (Guj) to the view taken by S. H. Sheth, J. in Civil Revn, Appln. No. 740 of 1971, (Guj.). The result is that the revision petition fails.

31. The revision petition is dismissed. The petitioner is ordered to pay the costs of opponents Nos. 1 to 4 (plaintiffs) and bear its own. Opponents Nos. 5 and 6 to bear their own costs. Rule is discharged.

32. Petition dismissed.