

(2010) 11 GUJ CK 0031
In the Gujarat High Court

Case No : Special Civil Application No. 11141 of 2009

Manubhai Jerambhai Dalwadi

APPELLANT

Vs

Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Citation : (2010) 11 GUJ CK 0031

Hon'ble Judges : S.R. Brahmbhatt, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : G.M. Amin, for the Appellant; Shital R. Patel, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case appear to be that the Petitioner and the Respondent No. 2 are real brothers. The land in question which was subject matter of the acquisition proceedings was originally held by Jerambhai Dalwadi, father of both the Petitioner and Respondent No. 2. Jerambhai expired on 28.02.1976. The acquisition proceedings thereafter were initiated but the land in the revenue record was not shown as divided by metes and bounds. It appears that on account of the said fact of no inter se division reflected in the revenue record, in the award of the land acquisition officer, names of the legal heirs of Jerambhai was shown, i.e., all the three sons. However, the Petitioner herein raised the dispute against the compensation which ultimately came to be referred to the Reference Court and the Reference Court enhanced the compensation by passing the award and in the award, the name of the Petitioner was only shown as that of the original claimant. The matter was also carried in appeal before this Court and the said appeal came to be dismissed and the award of the Reference Court came to be confirmed. Thereafter, the land acquisition officer deposited the amount and at the time of disbursement of the amount, it appears that the application was made by the Respondent No. 2 herein resisting the disbursement to the Petitioner of the whole amount and contended that he is the son of deceased Jerambhai representing 1/3rd share and therefore, the said amount should not be paid to the Petitioner. The Reference Court allowed the

application by the impugned order and under these circumstances, the present petition before this Court.

2. We have heard the learned Counsel appearing for both the sides for final disposal.

3. As such, the jurisdiction of the Reference Court is to decide the aspects of compensation whether given as per the market value or not and other statutory benefit. However, that does not mean that the Reference Court has no incidental power to decide the claim, if the dispute is raised between more than one claimant. But such powers could be said as a summary in nature and it cannot be like that of a Civil Court examining the title or rights of the parties in the property. In the present case, it appears that the Petitioner represented the property and continued to represent the property until the dispute for compensation was concluded between the land acquisition authority and the land owner/claimants. Therefore, in normal circumstances, when the Petitioner was representing the property all throughout the litigation and as his name was stated in the award, he would be entitled to disbursement of the amount, but as the nominee holding the amount in trust to be distributed amongst rightful owner of the property. If any sharer of the amount has any dispute qua the apportionment of the amount which may be received by the Petitioner, the proper course would be for filing an appropriate suit before the appropriate Court and the said Court after examining the title or rights of the parties concerned in the property could have passed the appropriate orders. The Reference Court in any case could not have gone into the said aspects in detail for conferring the right to receive the amount permanently. It appears that in the present case, the Reference Court has exceeded the jurisdiction in examining the said aspects.

4. We would have further examined the matter on the said aspect. However, Mr. Shital Patel, learned Counsel appearing for the Respondent No. 2 states that the Respondent No. 2 is desirous to file a suit for establishing the right in the property to receive the amount of compensation against the Petitioner. Therefore, he submits that the application made by him before the Reference Court may be permitted to be treated as not pressed with a view to file appropriate suit and consequently, the order may also be observed as not surviving, but he further submitted that some direction may be given to the Respondent No. 2 so as to enable him to approach before the appropriate court for getting appropriate orders and till then the disbursement of the share over which the claim is made by Respondent No. 2 may be prohibited.

5. Mr. Amin, the learned Counsel appearing for the Petitioner fairly submitted that on the contrary, right from the beginning, the contention of the Petitioner is that if the Respondent No. 2 is claiming any right to receive the compensation, he has to file appropriate proceeding before the appropriate Court and only thereafter, the amount can be paid and he submitted that as per his contention, the reference court could not have gone into the said aspect of title in the property.

6. We may record that the learned Counsel appearing for the Petitioner did contend that he had the exclusive right in the land on account of the inter se division amongst the legal heirs of deceased Jerambhai. Whereas the learned Counsel for the Respondent No. 2 also contended that right in the property remained intact as legal heirs of deceased Jerambhai inasmuch as he had a 1/3rd share in the property and the Petitioner had only the right to represent the property being elder son of deceased Jerambhai. However, we find that we need not go into the aforesaid aspects in detail, more particularly when the remedy is to be resorted by the Respondent No. 2 before the appropriate court and the appropriate court is to examine the said aspects in detail after giving opportunity of hearing to both the sides. Further, as the Respondent No. 2 has to resort to such remedy, the examination by this Court may be even prima facie, prejudice the rights of either side and therefore, we keep the said question open leaving the matter at that stage.

7. It was also contended by the learned Counsel appearing for Respondent No. 2 that he may not be faced with the situation of suit being barred since his father has expired long back and is claiming the right in the property now and consequently for receiving the compensation.

8. As such, the right could be said as having accrued to the Respondent No. 2 when the disbursement was to take place, but in view of the interim order passed by this Court, no disbursement has been made and therefore, when the Respondent No. 2 is claiming right to receive 1/3rd of the compensation by way of the disbursement and when the matter was pending before this Court, the aspects of delay would hardly operate against the Respondent No. 2 and the question of entitlement may be required to be examined by the Civil Court if such remedy is resorted to in accordance with law.

9. It deserves to be recorded that the claim of the Respondent No. 2 in any case is of 1/3rd of the share and therefore, so far as 2/3rd share is concerned, there is no dispute and as per the award, the Petitioner would be entitled to withdraw the same. However, for 1/3rd of the share, the disbursement may be stayed for some time so as to enable the Respondent No. 2 to resort to appropriate proceedings and so as to enable him to get suitable orders of concerned court in accordance with law.

10. In view of the aforesaid, we find that the following directions shall meet with the ends of justice:

The application made before the Reference Court by Respondent No. 2 by way of objection Exh.13 in LAR No. No. 3655/96 shall not survive as not pressed in view of the declaration made on behalf of the Respondent No. 2 before this Court. Consequently, the order passed below the said application, which is impugned in the present proceeding dated 13.10.2009 shall also not continue to remain in operation and would also not survive, but the aforesaid direction shall be with the further direction as stated herein after:

The Petitioner would be entitled to the disbursement of 2/3rd of the amount from the amount which is deposited pursuant to the order of the Reference Court and lying with the Reference Court qua the land in question.

11. So far as remaining 1/3rd amount of compensation is concerned, the same shall not be disbursed for a period of two months from the receipt of the order.

12. It is further observed that the Respondent No. 2 shall be at the liberty to resort to appropriate proceedings by filing suit or otherwise before the appropriate Court for establishing the right to receive aforesaid 1/3rd share and it would also be open to Respondent No. 2 to move the Court for appropriate prohibitory orders against disbursement of the amount or otherwise permissible in law. At that stage, the rights and contentions of both the sides, i.e., of Respondent No. 2 as well as of the Petitioner shall remain open.

13. In the event the proceedings are resorted to and the appropriate order is passed by the concerned Court, the amount of 1/3rd share shall be appropriated accordingly, but in absence thereof the amount upon the expiry of the period shall be disbursed to the Petitioner.

14. The petition is disposed of in terms of the aforesaid directions. Rule discharged. Considering the facts and circumstances, no order as to costs.