

(2018) 08 MAN CK 0007

In the Manipur High Court

Case No : Civil Revision Petition (CRP ART. 227) No. 6 Of 2017, Miscellaneous Cases No. 70 Of 2016, Original Suit (LA) No. 17 Of 2014, 10 Of 2015

Meinam Memchoubi Devi And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 6 Rule 1, Order 6 Rule 17
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 18, 30
Arbitration And Conciliation Act, 1996 — Section 20

Citation : (2018) 08 MAN CK 0007

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : M. Rarry, A. Golly

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri M. Rarry, the learned counsel appearing for the petitioners and Shri A. Golly, the learned counsel appearing for the respondent.

[2] The instant Civil Revision Petition has been filed by the petitioners against the order dated 16-02-2017 passed by the learned District Judge, Imphal West in Judl. Misc. Case No. 70/ 2016 [Ref:-O.S(LA) No.17/ 2014/10/ 2015].

[3.1] The facts and circumstances as narrated in the present civil revision petition, are that the petitioners are the recorded owners and possessors of a piece of land measuring an area of 0.0323 hectare under Patta No. 42/558, 823 (Old), 937 (New) covered by C.S. Dag No.4014 in Village No.42-Keishamthong, Imphal West. A special Notice dated 25-06-2012 came to be issued by the Collector, Land Acquisition to the petitioners in respect of the land acquisition proceedings for widening of NH-150 from Keishampat to Malom Bazar. The lands

of the petitioners being situated adjacent to the east of the NH-153 were affected and an award for compensation was pronounced on 14-10-2013 wherein the names of the petitioners were shown at Sl. No. 68 as affected land holders.

[3.2] In the meantime, on 10-07-2012 the petitioners filed an application before the learned Assistant Survey & Settlement Officer-IV, Imphal West being Demarcation Case No.36 of 2012 praying for demarcation of their homestead land, followed by an application dated 06-08-2012 filed before the Collector raising an objection as regards the area shown against the affected portion of the total area of homestead land. After the said applications being clubbed together, the learned Assistant Survey & Settlement Officer issued a memorandum in respect of the demarcation case showing the petitioner's loss of land. Another application dated 03-12-2013 was filed by the petitioners before the DC, Imphal west seeking a correction in the map relating to their land. A spot enquiry was conducted and a report thereof was submitted to the D.C by the SDO vide its letter dated 04-01-2014. On 23-01-2014 the petitioners filed another application contending that there is a clear boundary dispute between them and the respondent. As the State authorities failed to discharge their duties, the petitioners were constrained to approach the Hon'ble High Court by way of a writ petition being WP(C) No.544 of 2013 which was disposed of by the Hon'ble High court on 26-06-2014 directing the State respondents to examine the representation of the writ petitioners so that appropriate reference can be made under Section 18 read with Section 30 of the Land Acquisition Act. Consequent upon the passing of the said order dated 26-06-2014, the Under Secretary (Revenue), Government of Manipur directed the Deputy Collector, Imphal West to comply with the Court's order. Instead of complying with the said court's order, the Deputy Commissioner/ Collector, in a malafide manner, issued a notice dated 28-07-2014 to the petitioners and private respondents seeking for releasing the compensation. [3.3] Being aggrieved by the said notice dated 28-07-2014, the petitioners filed a writ petition being WP(C) No. 568 of 2014 wherein the Hon'ble High Court was pleased to pass an order dated 26-08-2014 directing the respondents therein not to release the compensation amount and to make a reference in accordance with law. Accordingly, the Deputy Commissioner/ Collector made a reference on 11-08-2014 to the Civil Court under Section 18 and 30 of the Land Acquisition Act and consequently, a Cheque for an amount of Rs.78,12,361/- being the amount of compensation, was deposited to the Civil Court. The said reference was registered as O.S(LA) No.17 of 2014.

[3.4] Even after the reference being made, the Deputy Commissioner/ Collector, LA vide its letter dated 27-10-2014 requested the District Judge, Manipur West for releasing a portion of the compensation which came to be challenged by the Petitioners in writ petition being WP(C) No.922 of 2014 which was disposed of on 17-08-2014. Few months later, the petitioners filed a writ petition being WP(C) No.278 of 2015 questioning the order dated 11-08-2014 by which their application dated 03-12-2014 was dismissed and a prayer was made to dispose of the said application. This Court was pleased to issue notice therein.

[4] In the reference case being O.S(LA) No.17 of 2014, the respondent filed his statement of claim dated 13-05-2015 contending that the disputed area of acquired land is owned by him and the affidavit filed in support thereof, has shown him to be the claimant No.2 and the relevant para of which are as under:

"1. That the present Claimant, Lantham Gopal Singh is the owner and possessor of a homestead land U/P No. 54/938 covered by CS Dag No. 1008/4015 measuring an area of .14 Acre (0.538 Hectare) situated at Village No. 42-Keishamthong. And inside the said ingkhoh he had constructed a pucca building structure on 1991 having 3(three) storied in the western portion of the said homestead land. And at the same time on construction of the said 3 storied building there was no objection from the next neighbor at any point of time.

6. That it is submitted that a piece of land of the present petitioner (L. Gopal Singh) measuring 0.0027 Hectare was acquired with pucca three storied building standing inside the said acquired land of the Collector, LA, Imphal West, Manipur under Patta No. 54/938 C.S. Dag No. 1008/4015 situated at Village No. 42-Keishamthong for widening NH-150 (Keishampat to Malom Bazar) for public purpose.

7. That in the said award/ order the name of the petitioner (L. Gopal Singh) appears at Sl.No. 67 and the awarded amount is Rs. 41,89014/- i.e., Value of land - Rs. 3,04,343/- 30% Solatium Rs. 91,303, 12% addl. Change Rs. 36,521/- Value of, standing building Rs. 37,56,347/-, Value of Standing Forest Rs. Nil, Value of standing Fish- Rs. Nil.

13. That it is further submitted that the present petitioner (Lantham Gopal Singh) is the absolute owner of the acquired land for widening N.H. 150 (Keishampat to Malom Bazar) and the standing structure was constructed by himself with his own cost by expending huge amount of money. Hence the present petition is entitled to receive the said awarded amount."

After the statement of claim having been filed by the respondent, the petitioners as co-claimant No.1 filed their statement of claim dated 23-11-2015 praying for determination of the actual size of the plot and the standing structure thereon, affected by the Land Acquisition, based upon the survey and Cadastral/ Trace Map of 1960 in respect of the land owned by the respondent and others and for passing order/ direction for awarding compensation thereafter.

[5] Thereafter, the respondent filed an application being Judicial Misc. Case No.70 of 2016 under Order VI Rule 17 read with Section 151 of CPC praying for amendment of his statement of claim and the proposed amendment as contained in para 3 thereof, is given as under:

"3. That it is humbly stated that the proposed amendment provided herein below is/are very much required to assist and enable the Hon'ble Court for just, fair and reasonable determination of the real questions of controversy between the parties in the aforesaid suit as well as to avoid multiplicity of litigations between

the parties.

PROPOSED AMENDMENT

A. At page 3 of the aforesaid statement of claim of the Respondent No. 2, just after paragraph 13, the following paragraphs No. 13(A) & 13(B) may be allowed to be added"-

"13(A). That the Respondent No. 2 humbly states that in 1954 his parents bought/purchased homestead land under patta No. 42/54 (old) /938(new) covered by C.S. Dag No. 1008/4015 measuring an area of .14 acre (0.538 hectare) from its earlier owner. During the life time of his parents, a double storied wooden house was constructed inside the said homestead land and the entire boundary was fenced with semi pucca brick wall with CGI roofing. The Respondent No. 2 in the year 1990 demolished and dismantled the said old house and boundary wall and started construction of pucca RCC building with pucca boundary wall. The said construction was fully completed in the year 1991 without any disturbance, interference or obstruction by any of the immediate neighbor. Suffice it will be to state that on and from 1954 till proceeding of the Land Acquisition process which is now under reference before the Hon'ble Court, the Respondent No. 2 is in open, peaceful and continuous physical possession and enjoyment of his aforesaid homestead land, irrespective of as to whether he is in possession and enjoyment thereof in excess or lesser than his recorded area.

13(B). That the Respondent No. 2 further humbly states that by virtue of his long, open, un-interrupted and continuous possession and enjoyment of his aforesaid homestead land, even assuming that he is holding land in excess of his recorded area, the Respondent No. 2 can be deemed to have perfected his title by prescription or by adverse possession."

B. At page 4 of the aforesaid statement of claim, just after the prayer "to release the said awarded amount of the standing structure" the following words/prayer and sign may be inserted;

"and also to release the awarded amount of compensation for the land in favour of the Respondent

No. 2,"

An objection to the said application for amendment was filed by the petitioners contending that the proposed amendment of the respondent will change the character and subject matter of the reference/ suit; that it is inconsistent and contradictory and that it will negate the admitted facts on record that he has always averred that he is the owner of the disputed portion of the land.

[7] The learned District Judge, Imphal West allowed the application holding that it is settled principle of law that in the Land Acquisition proceedings, the statement of claim of the claimant shall be treated as plaint and the statement of claims made by the respondent shall be treated as written statement. The

learned District Judge, relying upon the decision rendered by this court in the case of W. Ibotombi Singh Vs. Th. (o) Thambalngou Devi & ors, [2016 Legal Eagle (Mani) 168 and the decision of the Hon'ble Supreme Court rendered in M/S Modi Spinning and Weaving Mills Co. Ltd & Anr Vs. M/S Ladha Ram & Co., (1976) 4 SCC 320, has further held that the respondent No.2 can claim inconsistent plea of ownership over the suit land as well as by adverse possession in his statement of claim and that the proposed amendment is necessary for the purpose of determining the real dispute between the parties.

[8] It is not in dispute that the application being Judicial Misc. Case No.70 of 2016 was filed by the respondent under the provision of Order VI Rule 17 of the CPC which reads as under:

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The provision contained in Order VI Rules 17 CPC provides for amendment of pleadings. It is procedural and is not a part of substantive law. It can be broadly divided into two parts-one, the court may at any stage of the proceedings allow either party to alter or amend their pleadings in such manner and on such terms as may be just and two, all such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. The proviso to Order VI Rule 17 expressly bars such amendment after the commencement of the trial of the suit but it is not absolute because even after the commencement of the trial of the suit, the court may allow either of the parties to amend or alter their pleadings, if the court comes to the conclusion that after due diligence, the parties could not raise the matter before the commencement of the trial of the suit. Thus, it is clear that it has conferred discretionary power upon the court to be exercised by it subject to the conditions mentioned therein. It is well settled that generally, all amendments should be allowed but a substitution of one cause of action or the nature of the claim for another in the original plaint or change of the subject matter of controversy in the suit, shall not be allowed. The Hon'ble Supreme Court has examined and interpreted the provision of Order VI Rule 17 CPC in its various decisions laying down the guidelines for the courts in the country and in particular, the case of A.K. Gupta & Sons Ltd. Vs. Damodar Valley Corporation, (1966) 1 SCR 796 wherein the question relates to the amendment of plaint, the Hon'ble Supreme Court held that the general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a

suit on the new case or cause of action is barred: *Weldon Vs. Neale*. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation. Similar is the case with *B.K Narayan Pillai Vs. Parmeswaran Pillai*, (2000) 1 SCC 712 wherein the Hon'ble Supreme Court has held that the principle applicable to amendments of the plaint are equally applicable to amendments of the written statement. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original list was raised or defence taken. Inconsistent and contrary allegations in negation to the admitted position of facts or mutually destructive allegations of facts, should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

[9] Admittedly, there is no provision in the Land Acquisition Act which is inconsistent with the provisions of Order VI Rule 17 and therefore, the Order VI Rule 17 of the CPC will apply to the proceedings of a reference under the Land Acquisition Act. In this regard, various decisions have been rendered by the Hon'ble Supreme Court and the High Courts. In *Chimanlal Vs. Special Land Acquisition Officer, Poona*, AIR 1988 SC 1652 the Hon'ble Supreme Court has enumerated the factors to be taken into etched while disposing of a reference, of which two are that the court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material placed before and that the claimant is in the position of a plaintiff who has to show the price offered for his land in the award is inadequate on the material produced in the court. In *R.P.Conduit Manufacturing Co. Vs. Union of India*, ILR 1978 Delhi 513 with respect to the difference between a plaint in a suit and a reference under Section 18 of the Land Acquisition Act, the High Court of Delhi has observed that since, the plaint is in the exclusive control of the plaintiff he can apply for its amendment to the court without much restriction. The general rule is that an amendment ought to be allowed. The exceptions to this rule are

that an amendment would not be allowed if it changes the nature of the suit or the cause of action or if it seeks to plead for the first time a claim which by that time is barred by limitation and a plaintiff presented for the first time on such a claim would have been barred by time. On the contrary, an applicant under Section 18 cannot independently make the said application to the court. No broad proposition can be laid down as to whether application for amendment of a reference under Order VI Rule 17 Civil Procedure Code is maintainable or not. The answer depends on the nature of the amendment which is sought. If the amendment changes the nature of the claim which was originally referred to the court by the Collector, ordinarily it would not be possible to such an amendment. The analogy of reference made under Section 20 of the Arbitration Act is applicable here and the principle laid down recently by the Supreme Court would apply. But where the nature of the claim is unaltered and only a clerical error is sought to be corrected the amendment should be allowed under all the relevant provisions of the Code of Civil Procedure mentioned above. In *Vithal Vishwambharao Deshmukh Vs. State of Maharashtra*, 2004 (1) Mh.L.J 600 which relates to the problem which is centred on the question of market value of the land under acquisition, has observed that it is well settled law that the claimant is a plaintiff and the reference is an original proceedings to determine market value afresh and it is for the parties to the reference to produce evidence in support of their claims and rival claims regarding market value of the land.

From the above decisions, it is seen that a reference under the Land Acquisition Act is an original proceeding which is as good as a plaint filed under the provisions of Order VI Rule 1 of CPC and it can be amended in the same manner as that of a plaint. But the Punjab & Haryana High Court has made an observation as regards the statement of claim in respect of a reference under the Land Acquisition Act which is slightly different from that of others and in other words, the Punjab & Haryana High Court has added a flavor to what has been observed by other High Courts. In *Indraj Vs. Shamlat Deh Patti Jattan, Village Dado Ranghran*, 1993 (2) ILR (P&H) 382, the Punjab & Haryana High Court while considering a question as to whether the court, in a reference under Section 30 of the Land Acquisition Act, can add a person as a party, has observed that a reference under Section 30 is in the nature of an inter-pleader suit. The proceeding is a combination of as many suits as there are claimants and each claimant is both plaintiff and defendant. The proper procedure in such cases is the procedure which has been invariably followed by the Court as to call upon each claimant to file a statement of his claim-this statement would be his plaint. In answer to the claim thus made, the defendants, namely, the contesting claimants, would file statements-these would be their written statements. Although the decision of the Punjab & Haryana High Court is not binding on this court, it has persuasive value and on perusal thereof, this court is of the view that since it is quite reasonable and convincing, it can be countenanced and endorsed by this court. Moreover, the learned counsels appearing for the parties have not brought to the notice of this court any information as to whether any

appeal was preferred before the Hon'ble Supreme Court against it and if yes, what was its outcome.

[10] In the present case, the respondent filed his statement of claim before the learned District Judge, Imphal West on 13-05-2015 while that of the petitioners were filed on 23-11-2015 and therefore, in terms of the decision rendered in *Indraj* case (*supra*) referred to hereinabove, the respondent's statement of claim cannot be treated to be a written statement but a plaint for the reason that it was not filed as a reply to the statement of claim of the petitioners. The short question that arises for consideration by this court, is as to whether, having regard to the facts and circumstances of the case, the learned District & Sessions Judge, Imphal West is justified in allowing the application for amendment of the statement of claim filed by the respondent under Order VI Rule 17 CPC or not ?. The answer is in the negative. The learned District Judge has proceeded on the assumption as if the statement of claim of the respondent was a written statement and has held that the respondent can claim inconsistent plea of ownership over the suit land as well as by adverse possession in his statement of claim. Moreover, the decisions relied upon by it while deciding the application, have been rendered by this court and the Hon'ble Supreme Court on the issue relating to amendment of written statement. Although the plaint and the written statement are treated equally in respect of their amendment, as has been held by the Hon'ble Supreme Court in the case of *B.K.Narayan Pillai* (*supra*), the courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. But it is not so in regard to the amendment of the plaint and in so far as the amendment of plaint is concerned, it can be done only in terms of the principles laid down by the Hon'ble Supreme Court. The claim of the respondent as indicated in his statement of claim, is that he is the absolute owner of the acquired land for widening N.H.150 (Keishampat to Malom Bazar) and the standing structure was constructed by himself with his own cost by expending huge amount of money and therefore, he is entitled to receive the said awarded amount of compensation. In the application for amendment of his statement of claim, it has been stated by the Respondent that by virtue of his long, open, un-interrupted and continuous possession and enjoyment of his aforesaid homestead land, even assuming that he is holding land in excess of his recorded area, he can be deemed to have perfected his title by prescription or by adverse possession. From the proposed amendment, it is seen that the respondent was not sure about his ownership of the disputed portion of the acquired land and if the amendment is allowed, it will substitute a new cause of action for the earlier cause of action and in other words, it will change the nature of the suit which is impermissible in view of the law laid down by the Hon'ble Supreme Court in a catena of decisions.

[11] In view of the above and for the reasons stated herein above, the present Civil Revision Petition is allowed with no order as to costs.