

(1957) 08 AP CK 0030

In the Andhra Pradesh High Court

Case No : Civil Revision Petns. No's. 238 and 239 of 1 (sic) and Civil
Miscellaneous Petns. No's. 5100, 5101 of 1 (sic) and 1418 of 1952

Mohammed Ibrahim Sahib and others APPELLANT

Vs

Land Acquisition Officer, Bhimavara RESPONDENT

Date of Decision : 27-08-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 12, 12(2), 17, 18, 19

Citation : AIR 1958 AP 226

Hon'ble Judges : Krishna Rao, J; Bhimasankaram, J

Bench : Division Bench

Advocate : K.B. Krishnamurthy, for the Appellant; M. Seshachalapathi,
Government Pleader, for the Respondent

Judgement

Bhimasankaram, J.—These civil revision petitions arise out of proceedings for the acquisition of some plots of land for the use of a college in Bhimavaram, West Godavari District. We disposed of on the 21st of February, 1957 certain appeals arising out of a reference made to the Sub-Court, Narasapur by the Land Acquisition Officer concerned with that acquisition. In the same judgment whereby he disposed of the reference, the learned Subordinate Judge also dealt with four interlocutory applications, one of them unnumbered, presented by certain persons who had not sought a reference from the Collector to the court under S. 19 of the Land Acquisition Act.

The two civil revision petitions now before us are directed against the orders of the lower court on two of these interlocutory applications. C. R. P. No. 238 of 1952 is against the order in I. A. No. 896 of 1950 and C. R. P. No. 239 of 1952 is against the order in I. A. No. 1074 of 1950. Both these interlocutory applications purported to be made in O. P. No. 4 of 1950 which was how the reference abovementioned was registered and numbered.

In C. R. P. No. 238 of 1952 the petitioner has also filed an application for the admission of some documents as additional evidence C. M. P. No. 5100 of 1957. This and the connected petition (to dispense with the printing of documents sought to be admitted as additional evidence); will be dealt with towards the end of this judgment.

2. I. A. No. 896 of 1950 was filed by one Mohammad Ibrahim Sahib who claims a 2/9ths share in certain of the plots acquired. He is the brother of Mohammad Osman Saheb the claimant in I. A. No. 888 of 1950. I. A. No. 888 of 1950 was one of the several petitions filed by the claimants for enhanced compensation. Osman Saheb's claim also was referred to the court. The 1st petitioner in Civil Revision Petition No. 238 of 1952 before us however did not seek and obtain a reference to the court of his claim for higher compensation. When the reference was pending before the Sub-Court, Narasapur, he filed I. A. No. 896 of 1950 and his prayer in that petition was in these terms:

... that the matter may be enquired into as (if) this petitioner had Tiled objections or the matter may be sent back to, the Land Acquisition Officer for fresh disposal necessary.

3. These alternative prayers were based upon the following allegations: He did not receive notice either under S. 9 or S. 12 of the Land Acquisition Act and became aware for the first time of the acquisition proceedings only after the receipt of a notice from this Hon'ble Court to take the money lying in deposit after producing the necessary record of title According to him, as the matter was pending before the Court by the application put In by his brother, a co-owner with the petitioner and as he was a person interested In the objections filed by his brother, the Court was competent under the circumstances to grant either of the prayers. The other petitioners In the Civil Revision Petition who were four in number are the sisters of the petitioner and his brother Osman Saheb and each lays claim to a ninth share in the same items.

In the lower court they were the petitioners in the unnumbered interlocutory application and they have now joined their brother Ibrahim Saheb in the above Civil Revision Petition. In the unnumbered petition they prayed for a relief similar to that asked for by their brother Ibrahim Saheb in I. A. No. 896 of 1950. As they were not parties to the award, objection, was taken by the office in the lower Court to registering their application as an interlocutory application in the original petition and it was returned.

But they represented the application with a prayer that it may be heard along with the connected petitions. Now in this court they have filed C. M. P. 1418/52 to add them as petitioners in C. R. P. No. 238 of 1952.

4. The facts leading up to Civil Revision Petition No. 239 of 1952 may also be briefly stated. It is directed as already noticed against the order of the lower court on I. A. No. 1074 of 1950. That was filed by three petitioners. The second of those petitioners Mohammad Mahaboob Ali was not a party to the award and

he also filed a separate application which was numbered as I. A. No. 1059 of 1950 to add him as a party to the award under O. 1, R. 10, C. P. C. Both the applications were dismissed by the lower Court.

There is no separate civil revision petition before us against the order on I. A. No. 1059 of 1950 although the grounds which were urged to support of I. A. No. 1059 of 1950 by the petitioner in that petition have also been urged before us in this civil revision petition.

5. The above narrative discloses that the petitioners in the civil revision petitions fall into two groups - those who were parties to the award made by the Land Acquisition Officer and those who were not. Both the groups nevertheless claim that they are Entitled under the provisions of the Land Acquisition Act to have their claim for higher compensation considered by the Court seized of the reference made by the Land Acquisition Officer at the instance of their co-owners.

In the case of the second petitioner in I. A. No. 1074 of 1950, another special argument is raised in support of his right to intervene in the proceedings and ask for higher compensation Which will be separately considered.

6. We shall first deal with the case of persons who were parties to the award but nevertheless made no application to the Collector seeking a reference to Court. In order to appreciate the argument of the learned counsel for the petitioners, it is necessary to read Ss. 18, 19, 20 and 21 committing some immaterial portions in S. 19 which run as follows:

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter may be referred by the Collector for the determination of the Court, whether his objection to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objections to the award is taken:

provided that every such application shall be made,-

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) In other case, within six weeks of the receipt of the notice from the Collector under S. 12, sub-s. (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. (1) In making the reference, the Collector shall state for the information of the Court in writing under his hand-

(a) *** **

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages are paid or tendered under Ss. 5 and 17, or either of them, and the amount of compensation awarded under S. II; and

(d) *** **

(2) To the said statement shall be attach a schedule giving the particulars of the notice served upon, and of the statements in writing made or delivered by the parties interested respectively.

20. The Court shall thereupon cause a not- specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the court on that date to be served on the following persons, namely:

(a) the applicant;

(b) all persons Interested in the objection except such (if any) of them as have consent without protest to receive payment of the compensation awarded; and

(c) If the objection is in regard to the a (sic) of the land or to the amount of the compensation, the Collector.

21. The scope of the Inquiry in every s(sic) proceeding shall be restricted to a consideration of the interests of the persons affected by objection.

7. A plain reading of these sections shows that a special Jurisdiction is conferred upon (sic) Court by these Sections and it arises out of application made to the Collector by any per interested who has not accepted the award made by that officer. There can be no reference ex(sic) at the instance of such a person unless it b(sic) reference of a dispute under S. 30 of the (sic) with which we are not now concerned.

The argument for the petitioners however (sic) that any person interested in such land wh(sic) not satisfied with the award may intervene(sic) a reference obtained by some other person (sic) may raise art objection to the award, the (sic) cess of which would benefit him. This e(sic) merit is based upon the language of Ss. 19 (b), 20 (b) and 21 of the Act.

It is argued that the Statute directs n(sic) to be given to persons interested in such and that the object of the provision is to er(sic) them to participate in those proceedings (sic) assert their own claims if they are so incl(sic) The argument is sought to be reinforced by (sic) provision as to notice under S. 20 to "all per(sic) interested in the objection" and by the reference in S. 21 to "a consideration of the interest of the persons affected by" such objection.

We are unable to accede to this conten(sic) In the first place, it is to be noticed that (sic) is a provision for an application to be made (sic) a time limited for its presentation. A p(sic) not making the application within the time 1(sic)ed is to be deemed to have lost the right (sic) question the award. In the second place (sic)

Collector is to state the particulars mentioned in S. 19 "for the information of the Court", the names of the persons "whom the Collector has reason to think interested in such land given in order to enable the Court to issued a notice prescribed by S. 20.

It will choose, from among them the persons to whom notice is to be served having regard to the nature of the objection. It is conceivable that there may be persons interested in such land but not interested in the objection raised by the applicant. If, for instance, therefore several owners of the melwaram in the land and the objection relates only to apportionment (sic) the compensation among them, then notice need not go to the owner or the owners of the (sic)diwaram.

The latter are persons interested in the land it not interested in the objection. The "persons interested in the objection" would therefore (sic)em to cover primarily persons who are likely to be adversely affected by the success of the objection. For instance, when the objection is in regard to the area of the land or the amount of the compensation, the Collector would be interested, because it might, in either case, involve enhancement of the amount awarded by them.

The phrase "interested in the objection" does not therefore appear to us to cover "persons interested in the success of the objection". Even if it does, it cannot cover the case of persons who could have made a similar objection on their own behalf. Where a person claims a higher compensation for the land of which he is a co-owner, he may claim it either for his own share (sic)for the whole of the land A manager of the joint family may make such a claim on behalf of the joint family of which he is the manager.

A partner of a firm may make it on its behalf. But where the owner of a specific share claims a higher compensation for his own share, the owner of another share cannot be said to be interested In the objection raised by the applicant to the amount of compensation awarded in respect of the applicant's share.

8. Now in the light of the foregoing discussion, it seems to us that S. 21 has not the effect enlarging the scope of the enquiry to "a consideration of the interests of" all possible persons who would like higher compensation to be awarded to them. Any co-owner who has not filed an application under S. 18 cannot, in the circumstances be described as. a person who has not accepted the award and a person who has accepted the award cannot ask for its alteration though(sic) the instance of any person who has not accepted it he may be brought before the court for (sic) proper determination of all the objections (sic)sed by the applicant.

If a person is apportioned the Collector specific amount of the compensation awarded (sic)1 the applicant before the Collector questions (sic)t apportionment as too high then the former (sic)a necessary party to the proceedings before (sic) Court because no order can be passed in (sic)our of the applicant without having before (sic) court the party who is likely to be affected (sic)the success of the objection.

9. In our view, therefore, the mere fact (sic) t a person is brought before the Court as a (sic)-applicant party does not entitle him to venti-(sic) his own grievances against the award when (sic) himself has not filed an application to the Collector for a reference under S. 18 of the Act.

10. A similar view of the effect of these (sic) ons is to be found expressed in the decision (sic) Sri Rajah Vyricherla Narayana Gajapati Raju Bahadur Varu Vs. Perla Annapurnamma Garu and Others, and the decisions preferred to therein. In that case, the appellant (sic) was the owner of the kudiwaram in the land acquired was awarded a much higher amount than was awarded to the melwaramdar. The melwaramdar herself did not seek a reference under S. 18.

But on a reference made at the instance of the kudiwaramdar, the court below awarded an enhanced amount to her. The learned Judges pointed out that the Court had no jurisdiction to do so when she had made no objection to the award and had not asked for and obtained a reference to the court. In the course of their Judgment, they made the following observations:

The point appears to us to admit of no doubt. It was decided so long ago as 1907 in Ahu Bakar v. Peary Mohan Mokerjee, ILR 34 Cal 451 (B) that (i) a party who raises no objection to the apportionment of the compensation made by the Collector must be taken to have accepted the award in that respect and (ii) that under Ss. 18, 20 and 21 of the Act all that the Court can deal with, is the objection which has been referred to it, and it cannot go into a question raised for the first time by a party who had not referred any question or any objection to it under S. 18 of the Act.

11. Reference may also be made to the decision of the Privy Council in AIR 1930 64 (Privy Council) , in which their Lordships observed as follows:

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 these Sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection.

12. The learned counsel for the petitioners has referred us also to the definition of the expression "person interested" in S. 3 (b) of the Act which is as follows:

3. (b) the expression "person interested" includes all persons claiming an Interest in compensation to be made on account, of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

13. But this definition does not throw any light upon the present discussion because we are not dealing with the expression "person interested" as such. Nor are we concerned with the content of the phrase "person interested in such land."

14. The foregoing discussion therefore leads to the conclusion that so far as the present petitioners who were parties to the award are concerned, they cannot

ask the court to grant a higher amount of compensation in respect of their share of the land than the Collector had given them.

15. We shall now deal with the petitioners who were not parties to the award who claim to have received no notice of the acquisition proceedings until they were served with notice by the court to receive their share of the compensation, presumably after a deposit made by the Collector under S. 31 of the Act.

It appears to us that the position of this group stands on no better footing than that of the first group. The court's Jurisdiction under the above sections depends, as we have already stated, upon a reference to be made by the Collector. It makes no difference to the jurisdiction of the court to entertain an objection that the person raising the objection could not have asked for a reference by the Collector on the ground that he had no notice of the award.

Section 18 provides for a reference being asked by any person interested whether he was present or represented before the Collector or not. Even a person not present or represented, before the Collector and therefore not in receipt of the notice from the Collector under S. 12 (2) might ask for a reference under Cl. (b) of sub-s. (2) of S. 18 within six months from the date of the Collector's order.

It has been held by a learned Judge of this Court in K. Seshachalam Vs. The District Collector and Another that the words "within six months from the date of the Collector's award mean within six months from the date of the would-be applicant's knowledge of the passing of the award. If that view is right and we are not called upon in this case to decide its correctness - then these petitioners could have asked the Collector for a reference under S. 18 within six months of their having come to know of the award.

If, again, they had no notice of the land acquisition proceedings at all from the beginning to the end, that is to say, if their lands had been taken and the amount of compensation determined without reference to them, then all the proceedings so taken without the knowledge of the persons interested would be ineffective against them and they may seek their remedy in the ordinary courts of law. They might obtain redress by instituting a suit in a Civil Court or by praying in aid the powers of this court under Art. 226 of the Constitution. They cannot intervene in proceedings pending before a Court on a reference obtained by other persons interested.

16. We shall now deal with a special argument on behalf of the second petitioner in I. A. No. 1074 of 1950. He claims to be interested as a co-sharer in a total extent of 51 cents of land - 47 cents bearing R. S. No. 447/ 9 and 4 cents bearing R. S. No. 447/10. This property originally belonged to one Md. Ismail Saheb and after his death, at a division of his properties among his heirs these two items fell to the share of one of them Abdul Khadar by name who died a minor and without issues in 1949.

The three petitioners in the interlocutory application are the mother and two of the brothers, who had purchased share of the other brother also. It appears that the second petitioner on behalf of all of them filed a petition marked as Ex. A-26, before the Land Acquisition Officer which runs as follows.

Our house site situate within the area of the college has been asked for the purpose of the college. We have no sites elsewhere. The site for purchase elsewhere costs Rs. 300/- per cent. We therefore pray that our difficulties may be appreciated.

17. It is argued that this petition should be treated as an application for a reference made by the 2nd petitioner on behalf of all the petitioners in their right as legal representatives of Abdul Khadar Saheb who was a party to the award, that the Collector must be deemed to have erroneously declined to make the reference and that in the circumstances the Court may allow the petitioners to intervene in the proceedings. There are insurmountable objections to the course suggested. In the first place, Ex. A-26 cannot be treated as an application for a reference.

All that it can, at the most, be said to see. It is the grant of compensation at the rate of Rs. 300/- per cent. The request for this relief is addressed to the Land Acquisition Officer, and is presumably designed to induce him to grant that amount in his award. There is no request for a reference of the award to the Court. The award Ex. B-34 it may be noticed is dated 8-(sic) 1950 while this petition Ex. A-26 is dated 23-(sic) 1948.

It cannot therefore be treated as an application by a person not accepting the award. Even otherwise, assuming that the Collector did not make a reference under S. 18 of the Act in contravention of his statutory duty, then the proper remedy would be to seek a mandamus for the enforcement of that statutory obligation. The civil court seized of the matter under S. 18, (sic) already stated, is a court with a special jurisdiction and cannot direct a reference to itself nor proceed on the footing that a reference has been made when it ought to have been made by was not. There is no substance therefore this contention urged on behalf of the second petitioner in C. R. P. No. 239 of 1952.

18. The learned counsel for the petitioner has also argued that as under S. 53 of the Act the provisions of the CPC app. to all proceedings before the Court under the Act, the Court, has power to implead parties of the Land Acquisition proceedings before it under O. 1, R. 10. C. P. C. It is therefore urged the Court may add "persons interested" and award a higher compensation to them.

We have no doubt that in a proper case and for certain purposes the powers vested in a court under O. 1, R. 10, C. P. C, could be exercised but that does not, in our opinion, enable to court to add parties to grant them relief's which the provisions of the Land Acquisition Act do not enable it to grant.

19. In the result, the civil revision petition fail and are dismissed with costs.

Advocate's (sic) Rs. 75/- in each case.

20. In view of the dismissal of C. R. P. (sic) 238 of 1952, it is unnecessary to go into the me(sic) of the claim, to substantiate which the additional documents are sought to be filed in the revision petition. C. M. P. No. 5100 of 1957. Therefore dismissed. The other petition is a m(sic) formal petition to dispense with the printing of documents sought to be admitted as additional evidence and no orders are necessary thereon (sic).

There is also C. M. P. No. 1418 of 1952 f(sic) to implead the petitioners in the unnumbered interlocutory application" as parties to C. R. P. (sic) 238 of 1952. For the reasons already given, they cannot be impleaded for the purpose for wh(sic) they seek to be impleaded. This petition is (sic) missed.