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**(1963) 10 AP CK 0003**

**In the Andhra Pradesh High Court**

**Case No : First Appeal No. 145/1 of 1956**

Municipality, Nalgonda

APPELLANT

Vs

Hakeem Mohiuddin and Others

RESPONDENT

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**Date of Decision : 30-10-1963**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10  
Hyderabad Land Acquisition Act, 1309 — Section 25  
Land Acquisition Act, 1894 — Section 30, 53

**Citation : AIR 1964 AP 305**

**Hon'ble Judges :** Jaganmohan Reddy, J;Chandrasekhara Sastry, J

**Bench :** Division Bench

**Advocate :** T. Dasaratharamayya, for V. Venkateswarlu, for the Appellant;  
Vasantharao Mukhedkar, for Jalil Ahmed and T. Veerabhadrayya, for 2nd Govt.  
Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jaganmohan Reddy, J.—This appeal has been referred to the Bench by our learned brother, Manohar Pershad, J., as involving an important question relating to a reference u/s 25 of the Hyderabad Land Acquisition Act corresponding to Section 30 of Indian Land Acquisition Act. It appears that 35 guntas of land, 40 guntas making an acre, were acquired for building a civil supplies godown in 1954. Notices under Sections 3 and 5 were duly given and also individual notice was given to the Bahadur Khan Education Trust which appears to have been in possession of the land in question. An enquiry was held u/s 10 and a compensation of Rs. 4,235/- was fixed, but before an award could be passed three claimants put in application claiming to be entitled to compensation. The first application is by Ahmed Hussain made on 6-5-1356 F., which on enquiry was dismissed by the Collector. Then Abdul Karim made an application on 16-11-1358 F. This was also likewise dismissed. After this application was disposed of, one Ahmed Bi made an application after which Basheerunnisa Begum filed a claim. Both these claims were also dismissed by the Collector. Thereafter Abdul Karim

who was the-second claimant, again filed an application before the Additional Collector, whereupon the Collector made a reference to the civil Court by an order of reference dated 15-4-1954 in the following terms:

"Sri Hakeem Mohiuddin Hilal says that he is Secretary of Bahadur Khan Educational Society and that the land acquired belongs to that Society and therefore he claims the compensation. Another gentleman by name Syed Ahmed Hussain and a third one by name Abdul Kareem, a fourth lady by name Ahmed Bi, claim the same compensation, each one claiming himself as the sole owner of the land. The case is complicated and the claimants are many. This dispute can only be decided by civil Court according to Section 25 of L. A. Act"

The letter to the Court enclosing the files and the reference order was sent to the District Judge, Nalgonda, on 13-5-1954. On 15-5-1954 the District Judge directed notices to be given to the parties. Two of the parties were served, namely, Syed Mohiuddin Hussain Hilal on behalf of the Bahadur Khan Educational Trust and Abdul Karim. They were represented by their Advocates. It was stated that Ahmed Hussain died and the address of Ahmed Bi was not known. The District Judge directed notice to be given to the Collector not only for submitting a summary of the reference but also for depositing costs to serve the legal representatives of Ahmed Hussain and Ahmed Bi and the Chairman of the Municipality of Nalgonda town. Pursuant to this the Collector filed the summary on 28-9-1954 and deposited the costs. It appears that Ahmed Hussain was the husband of Basheerunnisa Begum and since he had made the application on her behalf he was sought to be served in the first instance but later the heir of Basheerunnisa Begum alias Sanjit Begum, was brought on record and after the parties were served, enquiry was duly held and the claim of the Bahadur Khan Educational Trust was upheld, and a declaration was given to that effect. Against this judgment and decree an appeal has been filed by the Municipality of Nalgonda.

When the appeal came up for hearing before our learned brother, Manohar Pershad, J., a preliminary objection was raised as to whether the appellant who was not a party before the Collector and whose name was not mentioned in the order of reference, could be made a party before the Civil Court after the reference is made and whether he could claim compensation. It was also sought to be argued that the Court could not question the legality of a reference made u/s 25. As already observed our learned brother having regard to these questions referred this matter to the Bench.

2. Before us the learned Advocate for the appellant has cited several decisions for and against the proposition that the Court has jurisdiction to entertain the claim of a person who has not filed his claim before the Collector. But before we refer to these decisions it would facilitate a better understanding if we refer to the relevant provisions of the Hyderabad Land Acquisition Act. Section 10 says:

"At the close of the inquiry, the Taluqdar shall make an Award, under his hand, of

the following matters, and obtain thereto the signature of such of the persons interested as have appeared before him in person or by representatives:

the true area of the land;

the amount of compensation which, in his opinion, should subject to the provisions of Sections 18 and 19, be allowed for the land; the apportionment of the amount of compensation among all the persons interested in the land."

Section 14 is in the following terms:

"14 (1) Any person interested, who has not accepted the Taluqdar's Award may, within two months from the date of receiving notice of such Award, require the Taluqdar by written application that the matter be referred to the Court for determination, whether his objection be to the measurement of the land, or to the amount of the compensation, or to the persons to whom it is payable or to the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the Award is taken."

Section 25 states:

"When the amount of compensation has been settled u/s 10, if any dispute arises as to the apportionment of such amount or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Taluqdar shall refer the dispute to the decision of the Court."

Section 26 is as follows:

"26 (1) On making an Award u/s 10, the Taluqdar shall pay the compensation awarded to the persons entitled thereto. But, if such persons do not agree to receive it, or if there be no person among them competent to receive it, or if there be any dispute as to the title to receive the compensation or as to the apportionment thereof the Taluqdar shall deposit the amount of such compensation in the Court, to which a reference u/s 14 would be made.

(2) Any person interested may receive payment of the compensation awarded, under protest as to the sufficiency of the amount: and if any person receives the amount without such protest, he shall not be entitled to make an application, u/s 14.

(3) Nothing contained in this section shall affect the liability of any person receiving any compensation, to pay the same to the person lawfully entitled thereto.

(4) The Taluqdar may, instead of awarding a money compensation, make a grant to any person interested, of land with his consent and with the sanction of Government or a remission of land revenue on his other lands, or an adequate compensation in some other way.

Explanation:-- The trustee or guardian of a person interested shall not be competent to receive any compensation on behalf of the person interested, if the trustee or guardian has not the power to alienate the land, or if, in such land, he has any personal interest adverse to that of the person interested."

These Sections correspond to the analogous provisions of Sections 11, 18, 30 and 31 of the Indian Land Acquisition Act, Act I of 1894. There are of course a few differences between this Act and the Indian Act, to which we shall refer in passing. But generally the provisions are similar and the two Acts follow the same scheme, which is that when land is compulsorily acquired for public purpose the Government has to notify the fact of the proposed acquisition u/s 3 and final notification u/s 5 and also where the persons interested are known and in so far as they can be ascertained individual notices have also to be served on them. The parties interested will present their claims before the Land Acquisition Officer, who after due enquiry is empowered to pass an award in respect of the area of land, the amount of compensation and the manner of apportionment of the compensation among all the persons interested. Any person aggrieved by the award of the Collector on any of these matters can ask the Land Acquisition Officer to make a reference u/s 14 corresponding to Section 18 of the Indian Act and the Collector shall then make a reference under the provisions of the respective Acts. If however before the passing of the award a dispute arises in respect of the claim to the compensation and not in respect of the amount of compensation u/s 25 of the Hyderabad Act, the Land Acquisition Officer is "bound to" refer the matter to Court for decision, while u/s 30 of the Indian Act he "may" do so. There is a difference in Section 11 and Section 30 of the Indian Act and Section 10 and Section 25 of the Hyderabad Act in this regard. Section 11 of the Indian Act provides that the Collector shall make an award, under his hand of (1) the true area of the land, (2) the compensation which in his opinion should be allowed for the land and (3) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Section 30 of the Indian Act states that when the amount of compensation has been settled under. Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. It will be observed from the language of these Sections comparing with the language of Sections 10 and 25 of the Hyderabad Act that under the Indian Act it is not obligatory for the Collector to refer the matter regarding apportionment to the Court; he may do so if he thinks it fit, but under the Hyderabad Act when there is a dispute the Collector or the Compensation Officer has to refer the matter to the Court, and has no power to decide himself rival claims. There seems to be some anomaly in the Hyderabad Act in this regard because u/s 14 of the Hyderabad Act the question of the persons to whom the compensation is payable also can be referred on the application of the aggrieved

party, so that if the Collector has no power to decide a rival claim u/s 10, such a question will not arise in a reference u/s 14. Again u/s 26 it is provided that if there be any dispute as to the title to receive the compensation or as to the apportionment thereof the Taluqdar shall deposit the amount of such compensation in the Court to which a reference u/s 14 would be made. The provisions can only postulate a power in the Collector to make a decision on the rival claims. For these reasons we are inclined to think that the drafting of the Section in Urdu has probably inadvertently brought out a force of the word "shall" and hence this apparent anomaly. In our view, the Legislature did not intend to create such an anomaly. Consequently we would be justified in reading Section 25 as vesting a discretion in the Collector to refer the matter with the force of the word "may". This will also bring it in line with the Indian Land Acquisition Act, which the Hyderabad Act intended to follow.

Be that as it may, on the terms of Section 25 the Collector can pass no award until rival claims are adjudicated on a reference by the Court. In fact when a reference is made either u/s 25 of the Hyderabad Act or u/s 30 of the Indian Act, the Collector will have to wait until the matter referred to the Court is finally adjudicated, before completing the award. This being the scheme of the Act the question is whether the civil Court has jurisdiction to entertain the claim of any person who has not filed his claim before the Collector. It must not be forgotten that the Land Acquisition Act is a special legislation prescribing a special procedure for the compulsory acquisition of property and the fixation of compensation. It also provides for special remedies in the event of the persons interested being aggrieved by the award on any matters dealt with by it. One of the remedies is the right to have a reference made to the civil Court. Now it is uniformly held by all Courts in this country that no person who is not a party to the proceedings before the Land Acquisition Officer, can have the benefit of the reference, nor can he agitate the claims before the Court on such a reference being made u/s 18 of the Indian Act. There is a Bench decision of this Court in *Md. Ibrahim Sahib v. Land Acquisition Officer* (1958) 2 AP WR 19: (AIR 1938 AP 226) where the provisions of Order 1, Rule 10, C. P. C. by virtue of the provisions of Section 53 of the Land Acquisition Act were sought to be brought in aid in support of adding as a party a person who was not a party to the proceedings before the Collector. This argument was rejected. *Bhimasankararn, j.*, observed at page 23 (of Andh WR): (at pp. 229-30 of AIR) as follows:

"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 u/s 12(a) might ask for a reference under Clause (b) of Sub-section (2) of Section 18

within six months from the date of the Collector's order."

Again at page 24 (of Andh WR): (at p. 230 of AIR) it was observed:

"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 Article 326 of the Constitution. They cannot intervene in proceedings pending before a Court on a reference obtained by other persons interested."

A similar view was also held by the Calcutta High Court in *Manjur Ahmed and on his death his heirs and legal representatives, Akhtari Bibi and Others Vs. Rajlakshmi Dassi and Others*, which referred to the previous decisions in

(a) *Mahananda Roy v. Srish Chandra*, 7 Ind Case 10 (Cal).

(b) *Indumati Debi Vs. Tulsi Thahurani and Others*,

(c) AIR 1930 64 (Privy Council)

and several other cases. The learned Advocate seeks to distinguish these decisions on the ground that they are u/s 18 of the Land Acquisition Act, where a reference can only be made if the party aggrieved makes an application while u/s 30 it is the Land Acquisition Officer who in his discretion is empowered to make the reference. We fail to understand the significance of this distinction. Once a reference is made the question is whether a person who is not a party to the proceedings when the reference is made, can be made a party before the Court. In other words, has the Court jurisdiction to entertain the claim or the petition of such a person if any reference u/s 18 is made? It has no such jurisdiction. On the same parity of reasoning it will also have no such jurisdiction on a reference u/s 30. The Calcutta High Court has consistently taken the view that even u/s 30 a person not a party to the proceedings before reference, cannot be made a party, nor can he urge his claim on that reference. *Mahananda Roy v. Srish Chandra Tewari*, 7 Ind Cas 10 (Cal) which referred to the previous case of *Prabal Chandra v. Peary Mohnn* 12 Cal WN 987 held that under Part III of the Land Acquisition Act the special Court has no jurisdiction to deal with objections except those which are made by persons who were parties to proceedings before the Collector, or who have within six months applied to the Collector to make a supplementary reference in their case. The Land Acquisition Act does not contemplate any decision by the Special Court unless, reference is made by the Collector. The addition of parties by the Civil Court, who have not been made parties to the reference by the Collector, is wholly inconsistent with the Land Acquisition Act and, therefore, the Civil Court cannot add such parties to a land acquisition proceeding before it, nor can it award any compensation to one who joined in the

proceeding for the first time in the Court of the Special Judge without applying to the Collector for any order of reference.

In *Indumati Debi Vs. Tulsi Thahurani and Others*, it was held that the jurisdiction of the Court in a reference made by the Collector u/s 30 is confined to a consideration of the dispute expressly referred to it by the Collector. An addition of parties may indeed be made when the persons who desire to be added as parties do not raise any new dispute but want to place other materials before the Court in connection with the dispute that is referred to it by the Collector. But it cannot be permitted where the question sought to be raised is entirely a new one and is not covered by the reference made by the Collector. Consequently, a person claiming a share in compensation money who was not a party to the proceeding before the Collector cannot be made a party to the apportionment case referred to Court u/s 30. In this case also 12 Cal WN 987 was referred to and the view taken in *Kishan Chand v. Jagannath Prasad* ILR 23 All 133 was differed from. In this case also it was urged on the basis of the Allahabad decision that Order 1, Rule 10 will come to the rescue. But the learned Judges observed that the decision in the Allahabad case however did not proceed on any distinction between the provisions of Section 18 and Section 30 of the Land Acquisition Act. In the Allahabad case the Bench had held that the provisions of Section 53 of the Land Acquisition Act which provide for the application of the provisions of the CPC in so far as they may be applicable to the proceedings, under that Act are sufficiently large to allow the adaptation of Section 32 of the CPC corresponding to Order 1, Rule 10 of the present CPC to the matter before the Judge and a person who was not a party to the proceedings before the Collector and who claims title by adverse possession was allowed to be added as a party to the reference before the Judge that was made by the Collector u/s 30 of the Land Acquisition Act. In our view also the Allahabad decision does not sufficiently consider the question that where a reference made to it is restricted to the determination of a particular dispute between specified persons, it has no jurisdiction to enlarge the scope of that dispute or the parties to that dispute other than those who are specified. Nor is there any justification in applying the entire provisions of the CPC to the matters referred to it. Section 53 is specific in empowering the application of those provisions save in so far as they may be inconsistent with anything contained in the Act. As such, the application of Order 1, Rule 10 and the addition of the parties who have not been made parties to the reference by the Collector is unwarranted and is without jurisdiction being wholly inconsistent with the Act, and therefore not covered by Section 53.

In the view we have taken the objection to the addition of the appellant as a party to the proceedings before the Court and the entertainability of the appellant's claim is valid. In this case it is somewhat curious and we have been unable to fathom the reason for the District Judge to have given notice to the appellant. Neither in the proceedings before the Collector nor in the summary nor in the reference order is there a whisper of any claim of the appellant. The appellant itself was surprised on receiving the notice and wanted to ascertain

from the Court further details of its claim and only when informed that if it does not appoint a lawyer and agitate its claim, its claim will be disallowed, that the appellant began to take some interest and prosecute its claim. If the appellant has any claim to compensation in respect of the land acquired, it has always a right of suit because u/s 26(3) the payment of any compensation to the respondent does not free it from the liability to the appellant if the appellant is declared entitled to it.

3. In the result this appeal is dismissed with costs on the ground that the appellant's claim cannot be entertained in these proceedings.