

(1998) 12 MAD CK 0012

In the Madras High Court

Case No : C.R.P. No. 361 of 1998 and C.M.P. No. 1872 of 1998

N. Doraisamy

APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board

RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

Citation : (1998) 12 MAD CK 0012

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Hema Sampath, for the Appellant; V. Shanmugham, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Plaintiff in O.S. No. 1096 of 1993 on the file of Principal Subordinate Judge, Trichy is the Revision Petitioner herein.

The relevant facts which necessitated filing of this Revision u/s 115 of CPC may be summarised thus. Plaintiff entered into an agreement with Tamil

Nadu Water Supply and Drainage Board (hereinafter called TWAD) for the purpose of laying, jointing and testing of A.C/C.I./PVC Pipes,

Specials and allied Civil Works for Reach III-A and III-B and branch pumping main work. It seems that the contract was terminated and plaintiff

filed a suit for declaration that the termination of Contract by letter dated 28.9.1993 purporting to terminate the contract is wrongful, illegal and

void, and grant a mandatory injunction ordering defendants to prepare final bill for the work done by plaintiff as on 30.9.1993 and pay the same

and also consequently granting permanent injunction restraining defendants from taking further action on the contract matter on the basis of alleged

termination including re-tendering of works to other agency for getting works done through other agency till at least defendants prepare the bill's

and pay the bills amounts to plaintiff in respect of the works done by plaintiff-and for consequential reliefs.

2. Defendants were served with summons. In application of the plaintiff an Arbitrator was appointed and thereafter. defendants, as arrayed in the

suit, filed I.A.18 of 1995 to appoint Superintendent Engineer, TWAD Board, Tanjore Circle, Tanjore as an Arbitrator in view of the provisions of

the Agreement. The said application was dismissed by Order dated 27.3.1995. The sole arbitrator appointed at the instance of plaintiff had

completed the work and the matter is now pending before the Court to consider the validity of the award.

3. At that time, the TWAD Board represented by its Managing Director, filed an application in I.A. No. 1178 of 1995 to get itself impleaded. In

the affidavit, it was said that the contract was with TWAD Board only and the defendants who are named in the plaint are only staff or officers of

the Board. It is also contended that u/s 56 of the Tamil Nadu Water Supply and Drainage Board Act, Managing Director is the proper person to

represent the Board and therefore. he must be impleaded as party.

4. Serious objections were raised by the plaintiff on the ground that it is not a necessary party. It is also contended that the Arbitrator was

appointed only with the consent of both parties. It is further contended that it is for the plaintiff to choose the proper person to be impleaded as

defendants, and even without Managing Director of TWAD Board, effective adjudication can be given and therefore the interlocutory application

has to be dismissed.

5. The lower Court, by the impugned Order allowed the application and permitted the TWAD Board to be impleaded as additional defendant.

The same is challenged in the revision under-Section 115 of Code of Civil Procedure.

6. Learned counsel for the petitioner submitted that it is for the plaintiff to decide as to who should be the parties to the suit and other persons

cannot volunteer themselves to get impleaded as party in a suit filed by plaintiff. It is also contended that with the consent of both parties a sole

arbitrator has been appointed and he also entered reference, in which defendants

on record have also participated and at this late stage there is no necessity to implead a person with whom plaintiff do not want to join in issue.

7. As against the said contention, learned counsel for respondents contended that the lower Court exercised the jurisdiction properly and therefore

the revision u/s 115 of CPC is not maintainable. When the interest of justice is considered, TWAD Board is also a necessary party. It is further

contended that the very contract was with the TWAD Board and the person who had signed the contract or named as defendants is only its

Officers. u/s 56 of the Tamil Nadu Water Supply and Drainage Board Act those officers are not competent to represent the Board and it should

be only by the Managing Director. When the suit is filed on the basis of the contract entered with TWAD Board and the decree is sought to be

obtained against the Board, it is only in the interest of all concerned Board also should be allowed to be impleaded. At any rate, no illegality is

committed by the lower Court which warrants interference u/s 115 of Code of Civil Procedure.

8. It is admitted in the plaint that the contract was entered with Tamil Nadu Water Supply and Drainage Board. It could be seen from the

agreement copy, which is made available by the learned counsel for the respondents at the time of argument, that the person who signed the same

was only on behalf of and on the direction of the TWAD Board. In fact, they are representing the Board while signing the agreement. In fact, the

very appointment of Arbitrator was on the basis of the agreement. It is true that the defendants on record also moved an application that their

representative also must be appointed as an Arbitrator, which was rejected. But, for the agreement, even the question of arbitration may not arise.

9. From a reading of plaint, it is clear that the plaintiff wants a decree only against the TWAD Board and not in the personal capacity of the

defendants. If the defendants are also made liable to pay the amount, it cannot be disputed that it is the Board which has to incur that liability.

Naturally, the Board is a necessary party in the case.

10. The Board is a statutory Body and Section 56 of the Act declares that in all suits and proceedings, the Managing Director alone should

represent the Board and no other person is given the power to represent it. It therefore, follows that the defendants on record are not the proper

persons who are eligible to represent the Board, when the same is fixed by the statute.

11. By filing an application, permitting the Board to come on record, I do not think that the plaintiff is put to any difficulty or prejudice. It is in

respect of contract entered with the Board, plaintiff wants relief. Therefore, even if the plaintiff is entitled to any relief, that can only be against the

Board and not against the Officers individually. It is only proper and in the best interest of all parties, to permit the Board itself to come on record.

The procedure adopted by the lower Court can never be said as improper or illegal.

12. In a recent decision of Honourable Supreme Court reported in M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, their Lordships said thus,

...It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual

adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and

complete adjudication of the dispute could be made and no relief granted....

Their Lordships further went on and said thus,

...It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is

not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely

that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which

makes it necessary to make a person a party to an action is 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 line has been drawn on a

wider construction of the rule between the direct interest or the legal interest and commercial interest. It is. not necessary for the purpose of this

case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in

New Redbank Tea Co. (P) Ltd. v. Kumkum Mittal has pointed out that Respondent 11 who filed a suit for specific performance in the High Court

was sought to come on record in the suit in which he had no direct interest in the

pending matter. Under those circumstances, this Court had held that Respondent 11 was neither necessary nor proper party in the leasehold interest involved in the suit. In *Union of India v. Distt. Judge, the Union of India* who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10 CPC for determination of the compensation in respect of the acquired land. In *Bihar SEB v. State of Bihar* the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In *Anil Kumar Singh v. Shivjiath Mishra* Similar question was answered holding that the respondent was a necessary party.

(Emphasis supplied)

13. Counsel also brought to my notice the decision reported in *Union of India (UOI) and Another Vs. District Judge, Udhampur and Others*, wherein their Lordships interpreted the word "person interested". In that case, for the purpose of Government of India, some land was required.

Government of India wanted to file an appeal, though it was not a party in the land acquisition proceedings. In paragraph 7 of the Judgment their

Lordships held that the Union of India is a necessary party. Their Lordships held thus,

The next question, therefore, is whether the appellants have locus standi to object to" the compensation determined by" the competent authority

u/s 8(3) of the Act. Section 2(d) of the Act defines:

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.

This point is no longer res integra. Dealing with a pari materia definition of "person interested" in Central Act, this Court in *Himalayan Tiles &*

Marbles (P) Ltd. v. Francis Victor Countionho had laid down thus: (SCR pp. 242-43: SCC pp.228-29, paras 13-14)

The only case which appears to have taken a contrary view is a Division Bench decision of the Orissa High Court in the case of *State of Orissa v.*

Amarandra Pratap Singh where the High Court held that the expression "person interested" did not include a local authority or a company on

whose behalf acquisition is made by the State. At the same time, it was clearly

held that it was open to the company in any proceedings before the Collector or Court to appear and adduce evidence for the purpose of determining the amount of compensation.

Thus, the preponderance of judicial opinion seems to favour the view that the definition of "person interested" must be liberally construed so as to include a Body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a Court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a Court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefore because, both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.

8. This view was reiterated in *Neelagangabai v. State of Karnataka*; *Krishi Upaj Mandi Samiti v. Ashok Singhal*; *Union of India v. Sher Singh and Bihar State Electricity Board v. State of Bihar*. "Thus, it is settled law that the requisitioning authority is a person interested since it is interested in the fixation of the proper and just market value or compensation of the land acquired on its behalf as well as to see that the true extent of the land

is acquired and is free from encumbrances. The participation in the proceedings by the local officers is to enable not only the determination of the proper and just a market value or compensation in their presence after laying necessary and relevant evidence but also to secure valid title to the land acquired so that land acquisition officer and the Court determine just and proper market value of the lands. It is therefore, clear that the appellant is a proper and necessary party under Order 1 Rule 10 CPC. It is also the person interested u/s 2(d) of the Act. Accordingly, the view of the High Court that the appellants are not interested persons is clearly illegal. It is accordingly set aside.

14. In view of these decisions, I do not find that the lower Court is wrong in permitting first respondent to be added as party. Section 115 is a power of super-intendence. Unless plaintiff shows that there is failure of justice or what the lower Court has done is one without jurisdiction, the Court could not interfere. If substantial justice is done Court will refuse to interfere in such cases.

15. In this, case the impleading of first respondent as additional defendant in the suit is not going to affect plaintiff in any way. In fact, first respondent, by volunteering itself joining as party has only helped plaintiff for proper adjudication of the suit. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, C.M.P. No. 1872 of 1998 is closed.