
(1963) 03 KL CK 0008
In the High Court Of Kerala
Case No : C.R.P.No. 262 of 1961

Padmanabha Menon

APPELLANT

Vs

Bhaskara Menon and Others

RESPONDENT

Date of Decision : 13-03-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 32

Citation : (1963) KLJ 724

Hon'ble Judges : T.K. Joseph, J;K.K. Mathew, J

Bench : Division Bench

Advocate : T.R. Achutha Warriar and K. Ravivarma Thampan, for the Appellant;
K.N. Narayanan Nair, G. Raghava Panicker and N. Sudhakaran, for the
Respondent

Final Decision : Dismissed

Judgement

Mathew, J.—This revision petition arises from an order passed by the Additional District Judge, Parur, impleading the petitioners as additional defendants in a reference u/s 27 of the Travancore Land Acquisition Act. The petitioners who sought to get themselves impleaded were not parties to the proceedings that terminated in the reference by the Land Acquisition Officer. There were three defendants on the array of parties in the proceedings before him. The 1st defendant is the Thandapper holder of the property, the 2nd defendant was a person in possession of the same, and 3rd defendant claimed that he had rights under a usufructuary mortgage followed by a lease back in respect of the property. The Land Acquisition Officer awarded compensation to the three defendants jointly. The award states that

The amount will be given on production of title deeds and on the defendants coming to terms.

As the defendants did not come to terms the Land Acquisition Officer referred the question of apportionment of the compensation amount to the Court u/s 27 of

the Travancore Land Acquisition Act. While the reference was pending, the petitioners in the lower court filed an application to get themselves impleaded as additional defendants on the ground that the property actually belonged to them. That application was opposed by the revision petitioner, but the lower court overruled that objection and allowed the petitioners to be impleaded as additional defendants. It is this order that is challenged in this revision petition. When the revision petition came up for hearing, one of us referred it for decision by a Division Bench as the authorities on the point arising for consideration are not uniform.

2. The point for consideration in the revision petition is whether the lower court had jurisdiction to implead the counter-petitioners in this revision as additional defendants or whether the order is vitiated by material irregularity. If the lower court had jurisdiction to implead, it goes without saying that the revisional jurisdiction of this court need not be invoked to interfere with the order passed by the lower court. The contention of the petitioners was that u/s 27, the only question referred was the dispute between the parties who appeared before the Land Acquisition Officer and no person who was not a party to the reference could come and get himself impleaded as an additional party before the court hearing the reference.

3. The petitioner relied upon the rulings reported in *Manjur Ahmed and on his death his heirs and legal representatives, Akhtari Bibi and Others Vs. Rajlakshmi Dassi and Others*, *Indumati Debi Vs. Tulsi Thahurani and Others*, , *Sirkar v. Narayana Iyer* (30 T. L. J. 324), AIR 1930 64 (Privy Council) and *Tikait Nagendra Nath Sahi and Another Vs. Bhagwati Prasad Narayan Sahi and Others*, for the proposition that the court hearing a reference must confine itself to the matters actually referred and cannot enlarge the scope of the reference by impleading persons not parties to the reference and that in this case the order of the lower court impleading the counter-petitioners would have the effect of enlarging the scope of the reference. He also relied on Section 21 of the Travancore Land Acquisition Act to reinforce his submission that the court hearing the reference was restricted to a consideration of the interest of the persons affected by the objection. We do not think that Section 21 has any application at all, as the reference in this case was u/s 27. Section 21 can apply only to a reference made u/s 18 of the Act. Therefore the only question for consideration is whether the court hearing a reference u/s 27 has power to implead a person although that person has not been a party to the award or the reference. Section 37 of the Act makes it clear that a court hearing a reference under the Land Acquisition Act has got the power to implead additional parties in appropriate cases. Section 37 corresponding to Section 53 of the Indian Act provides that the provision of the CPC in so far as they are not inconsistent with anything contained in the Act, shall apply to all proceedings before the court under the Act. Therefore the provisions of O. I. R. 10 of the CPC are attracted to the proceeding in the court hearing the reference under the Land Acquisition Act, and the court, therefore, has power to implead all necessary or proper parties. In *Mani and another v*

Premier Tyres Ltd. (1963 K. L. J. 136) Raman Nayar J. has observed as follows:

True, Section 37 of the Travancore Act like Section 53 of Indian Act attracts the provisions of the CPC to proceedings before court but there is no provision of the Code which empowers a court to invite a rank outsider to join in a proceeding before it - Order I, R. 10 which governs the matter authorizes the joinder only of a person who ought to have been joined or whose presence may be necessary for a proper adjudication, and the company, as we shall presently see, has neither qualification.

This would imply that the court has got power under O. I. R. 10 to implead additional parties. In Hashim Ibrahim Saleji and Others Vs. Secretary of State and Others, it was held:

In reference under the Land Acquisition Act the addition of parties is under certain circumstances permissible and it does not matter whether the subject of reference is one of valuation or of apportionment,

The same view was taken in Indumati Debi Vs. Tulsi Thahurani and Others, where B. K. Mukherjea and Roxburgh JJ. have 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.

According to this decision, if the question sought to be raised is entirely a new one and is not covered by the reference by the Land Acquisition Officer, that cannot be allowed to be agitated by any person. Therefore a person claiming a share of the compensation money when not a party to the proceedings before the Land Acquisition Officer, cannot be made a party when the dispute as to apportionment is referred to court u/s 30. It was further held in that case that although Section 21 would not in terms apply to a reference u/s 30 of the Indian Act, the wording of Section 30 would indicate an intention on the part of the legislature to confine the enquiry by the court to the dispute between the actual parties to the reference, and that an addition of parties may be made when the persons who desire to be added as parties do not raise any new dispute but want to place other materials in connection with the dispute already arising between the parties.

4. In Special Land Acquisition Officer v United Laloo (A. I. R. 1942 Sind 82) it was held that in the case of a reference by the Collector u/s 30, a person interested within the meaning of Section 3 (b) of the Act can apply to the court to be impleaded as a party to a reference u/s 30 although his name does not appear in the reference, provided the question raised by him is in essence a dispute already referred. That was a case where an application was made under

O. I, R. 10 and the court in considering the application found that the persons sought to be impleaded were necessary parties for a complete adjudication of the question involved in the reference. In *Kishan Chand v Jagannath Prasad* (I. L. R. 25 All. 133) it was held that in a reference u/s 30 the court hearing the reference has got ample jurisdiction to implead all the necessary or proper parties. In the course of the judgment the learned Judge observed as follows:

We see no reason for restraining the wide language of Section 53 and the provisions of Section 32 of the CPC appear to us to be in no way inconsistent with anything contained in Act No. 1 of 1894. To us it appears distinctly in the interest of all that the questions which arise as to compensation to be paid for a piece of land taken up should be dealt with as far as possible at one and the same time.

5. So far as the court hearing a reference u/s 30 is concerned, by the express language of the Act itself the provisions of the CPC are made applicable, and therefore, we think, that under the provision of O. I. R. 10 it is open to the Court to implead any person interested in the controversy pending before the Court provided the nature of the dispute referred is not enlarged or altered. As there was no want of jurisdiction in the lower court, and as there was no material irregularity or illegality in the exercise of its jurisdiction by that court in passing the order, we do not think it necessary to invoke our revisional power to correct any error--if at all there is one--in the exercise of that jurisdiction. The reference being for the determination of the question of apportionment of the compensation it is only proper that in appropriate cases persons who are interested in the property and of whose claims the Land Acquisition Officer may not have been aware should be added as parties for a final and effectual adjudication of the question referred. In the circumstances of the case, we do not think that we should interfere with the order passed by the court below. In the result, the revision petition is dismissed but in the circumstances we do not make any order as to costs.