

(1999) 08 BOM CK 0073

In the Bombay High Court

Case No : Civil Revision Applications No's. 183, 184, 185, 186 and 187 of 1997

Shri Nirakar Deu Desai and others

APPELLANT

Vs

Shri Nirakar Devasthan of Palolem and others

RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10, Order 1 Rule 3, 115

Land Acquisition Act, 1894 — Section 10, 11, 12, 14, 18

Citation : (2000) 2 ALLMR 125

Hon'ble Judges : R. M. S. Khandeparkar, J

Bench : Single Bench

Advocate : S. S. Usgaonkar, for the Appellant; N. Sardesai and L. V. Talaulikar, for the Respondent

Judgement

R. M. S. Khandeparkar, J.—The common question of law arises in all these five revision applications and therefore they were heard together and are being disposed off by this common judgment.

2. The point for determination which arises is whether a person who had not been a party to the Land Acquisition proceedings before the Collector can seek impleadment as a party to the proceedings before the District Court in a reference u/s 30 of the Land Acquisition Act, 1894, hereinafter called as "the said Act". In all these matters, the reference Court placing reliance upon the judgment of the learned Single Judge of this Court in the matter of Govind Narayan Lotlikar v. Smt. Savitribai Roghuvira Lotlikar and others, reported in AIR 1987 Bom. 32 has held that a person who was not a party to the proceedings before the Land Acquisition Officer cannot be added as party to the proceedings before the Reference Court in a reference u/s 30 of the Act, even if such party has or has acquired any right over the land which was acquired and which was the subject matter in the Land Acquisition proceedings in which the reference has been made. In all these five matters applying the test laid down by this Court in the said Govind Narayan Lotlikar's case (supra), the applications filed by the

intervenors were dismissed by the impugned common order. Aggrieved by the said order, the petitioners have approached this Court in these revision applications.

3. Shri S. Usgaonkar, Advocate for the petitioners, Shri L.V. Talaulikar and Shri N. Sardessai, Advocates for the respondents were heard at length in these petitions. The Advocates have relied upon various decisions of the Supreme Court as well as of various High Courts. Moreover, for the purpose of decision in the matter, suffice to refer to three decisions of the Apex Court. The decisions relevant in the matter are those in Smt. Ambey Devi Vs. State of Bihar and another, . Sunder Lal Vs. Paramsukhdas, , Dr. G.H. Grant Vs. State of Bihar, ,

4. Bearing in mind the scheme of the Act and considering the various submissions made by the learned Advocates for the parties, a clear answer to the point for determination can be found in the matter of Smt. Ambey Devi (supra). The said decision of the Apex Court in no way is contradictory to the earlier decision of the Apex Court either in the matter of Sunderlal (supra) or in the matter of Dr. G.H. Grant (supra), as is sought to urged by the learned Advocate for the petitioners.

5. In Sunderlal's case (supra) while interpreting the expression "person interested" the Apex Court has held that in order to fall within the scope of definition "person interested", a person need not claim interest in the land which has been acquired and it is sufficient if such person claims interest in the compensation to be awarded. After considering the scheme of the Act and the definition of the expression "person interested", the Apex Court has observed thus :

"The scheme of the Act seems to be to first deal with persons who are interested in land. These persons are heard u/s 5-A of the Act. The ordinary meaning of "the person interested in land" is expanded by section 5-A(3) for the purposes of this section, to include a person who would be entitled to claim an interest in compensation. It follows from section 5-A(3) that a person claiming an interest in compensation would be one of the person whose interests are meant to be safeguarded. It appears from section 6 to 10 that a person claiming an interest in compensation is not expressly mentioned. But in section 11 he is expressly mentioned and it is directed that the Collector shall inquire into respective interests of the persons claiming the compensation and shall make an award. Section 12 makes the award final and conclusive as between persons interested, i.e. including persons claiming an interest in compensation. u/s 14 the Collector has power, inter alia, to summon the parties interested.

Under section 18 any person interested can claim a reference. A person claiming an interest in compensation would also be entitled to claim a reference. After a reference is made the Court is enjoined u/s 20 to determine the objections, and serve, among others, all persons interested in the objection. A person claiming an interest in compensation would, it seems to us, be a person interested in the

objection if the objection is to the amount of compensation or the apportionment of compensation, and if his claim is likely to be affected by the decision on the objection. Section 21 restricts the scope of enquiry to a consideration of the interests of the persons affected by the objection. But it does not follow from section 21 that there is any restriction on the grounds which can be raised by a person affected by the objection to protect his interests. The restriction that is laid is not to consider the interests of a person who is not affected by the objection. Section 29 deals with apportionment of compensation, if there is agreement and section 30 enables the Collector to refer disputes as to apportionment to the Court. From the above discussion it follows that a person claiming an interest in compensation is entitled to be heard u/s 20 and 21 of the Act."

6. In Dr. G.H. Grant's case (supra) it was held that the Collector is not authorised finally to decide the conflicting rights of the persons interested in the amount of compensation: his primary concern is with the acquisition of the land. It is true that while determining the amount of compensation which may be offered, he has to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether they have appeared before him or not. But the apportionment by him does not determine finally the rights of the persons interested in the amount of compensation: his award is only conclusive between the Collector and the persons interested and not amongst the persons interested. The Collector has no power to adjudicate finally upon the title to compensation: that dispute has to be decided either in a reference u/s 8 or u/s 30 or in a separate suit. It was also held therein that the person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served u/s 12(2) must, if he does not accept the award, apply to the Collector within the time prescribed u/s 18(2) to refer the matter to the Court. The differentiation of the provisions u/s 18 and 30 have been highlighted by pointing out the provision u/s 18 which requires an application being made to the Collector within the period prescribed under sub-section (2) Clause (b) thereof and those of section 30 whereunder, there is no period prescribed for such application. Again u/s 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is u/s 30 not enjoined to make a reference: he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award.

7. The Apex Court in Smt. Ambey Devi's case (supra) after taking into consideration the scheme of the said Act and in particular section 53 thereof, which speaks about the application of the provisions of the CPC to the proceedings before the Reference Court pursuant to the reference u/s 18 or section 30 of the said Act, held thus :

"The learned Counsel for the appellant contended that u/s 53 of the Act the procedure prescribed under C.P.C. is applicable to the proceedings of the Civil Court unless they are inconsistent with any of the provisions confined in the Act. Since Order 1, Rule 10 C.P.C. requires impleadment of all necessary and proper parties, the appellant being a necessary party to the proceedings, she is entitled to the same compensation as was awarded to the other claimants. We find no force in the contention. The Scheme of the Act is inconsistent with C.P.C. regarding the entitlement to claim compensation under the Act. The C.P.C. provides only the procedural format to adjudicate the dispute. After the award was made u/s 11, the Land Acquisition Officer was required to issue notice u/s 12 to the parties. As contemplated u/s 30 of the Act, the appellant is entitled to receive the compensation either under protest or without protest. When the compensation is received under protest under sub-section (1) of section 18 the application in writing has to be made within the limitation prescribed u/s 18(2) to the Land Acquisition Officer objecting to either extent of the land, classification, value of the land or apportionment of the compensation and upon receipt thereof reference to Court would be made. Thereunder the applicant shall be required to state the grounds on which he/she objects to the compensation, etc. Valid reference is a pre-condition for the Civil Court to adjudicate the objections raised in the reference application. In this case, it is found by the High Court that the appellant has not made any application u/s 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down u/s 23 of the Act, would arise only when a valid reference has been made u/s 18 within the prescribed limitation. The jurisdiction of the Court is founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimants.

We accept the finding of the High Court that the appellant had not made any application u/s 18 though the appellant has asserted that she did not make an application but no evidence has been placed before the High Court or in this Court. Thus, it is difficult to accept that such an application was in fact made before the Land Acquisition Officer within the limitation prescribed u/s 18(2) of the Act. Accordingly, we hold that the appellant has not filed any application as required u/s 18(1) read with section 18(2) of the Act. Section 53 does not apply to the facts of the case. The procedure prescribed under sections 18 and 30 is inconsistent with the procedure prescribed under Order 1, Rule 10 C.P.C. Order 1. Rule 10 C.P.C. would apply to implead a necessary and proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties who may be bound by the decision. That question does not arise since inconsistent procedure has been prescribed under the Act. As held earlier making an application in writing under sub-section (1) and within the limitation prescribed under sub-section (2) of section 18 are conditions precedent for the Land Acquisition Officer to make a reference u/s 18 only on its receipt, u/s 20 Civil Courts get jurisdiction to issue notice and thereafter to conduct enquiry, as contemplated under the Act. At this stage, the procedure of

trial etc. as contemplated under the C.P.C. would apply and section 53 of the Act would become applicable. It is an admitted position that the co-owner filed an application and had sought reference u/s 18 in respect of his share only." .

8. The scope of reference is therefore limited to the terms of reference. The terms of reference would depend upon the objections by the claimants. The objections can be in relation to those subjects which are specified u/s 18 or section 30 of the said Act. It is only after the valid reference that the Court has to inquire into the matter and for that purpose follow the procedure prescribed under the Code of Civil Procedure, subject to that it shall not be inconsistent to the provisions of the said Act. It has been specifically held by the Apex Court that the provisions of Order 1, Rule 10 C.P.C. are inconsistent with the scheme of the said Act.

9. It is also to be noted that the third proviso to sub-section (2) of section 31 provides that nothing contained therein shall affect the liability of any person who may receive the whole or any part of the compensation awarded under the said Act, to pay the same to the person lawfully entitled thereto even though such person may not have appeared before the Collector under the said Act.

10. Therefore, the point for determination framed above, is to be answered in the negative.

11. Undisputedly, the intervenors whose applications are rejected by the Reference Court were not parties to the proceedings before the Land Acquisition Officer. It is also not in dispute that none of them had filed any application for reference either u/s 18 or 30 of the Act in the matter. Admittedly, the intervenors are seeking impleadment much after the reference was made by the Collector to the Reference Court. In the circumstances, no fault can be found with the final decision of the Reference Court in rejecting the applications of the petitioners.

12. In the result, therefore, the revision applications fail and are hereby dismissed with no order as to costs. Rule is discharged in all the petitions. Interim relief granted stands vacated.

Revision applications dismissed.