

(2013) 01 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No. 27925 of 2012 (LA-RES)

Sri. Shambanna @ Shambu

APPELLANT

Vs

The Special Land Acquisition Officer, MUDA and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 2 AKR 362 : (2013) 5 KarLJ 509 : (2013) 2 KCCR 1334

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Judgement

Anand Byrareddy, J.—The petition coming on for preliminary hearing in the "B" group, is considered for final disposal having regard to the facts and circumstances. The petitioner is the claimant in a matter referred to the Civil Court u/s 18 of the Land Acquisition Act, 1894 in case no. LAC 536/2006 on the file of the I Additional Civil Judge, Mysore. It transpires that respondents 3 to 11 herein had filed an application under Order I, Rule 10(2) of the Code of Civil Procedure, 1908 (Hereinafter referred to as the "CPC", for brevity) seeking to implead themselves as claimants in the said case. They had contended that they had filed a civil suit against the present petitioner in O.S. No. 900/2005 on the file of the Court of Small Causes, Mysore, seeking the reliefs of partition, declaration and permanent injunction in respect of ancestral properties including land bearing survey Nos. 134, 131 and 135 of Lalithadripura Village, which were said to have been acquired by respondent No. 1. In the said suit, there was an order of temporary injunction against this petitioner not to alienate the lands. It was their allegation that the petitioner herein had received the compensation from the respondent - authority on the compulsory acquisition of the property, without their knowledge and he was before the Civil Court seeking higher compensation. It was their case that they had a substantive right and interest in the joint possession of the properties and were entitled to their share of the compensation amount and therefore sought to implead themselves. The present petitioner resisted the application on the footing that there was a registered Will in his favour, executed by his grand father which had declared that it is the

petitioner alone who would exclusively inherit the properties. That he was aware of the suit, but insisted that the applicants had no right to participate in the reference proceedings as the question as to their entitlement was not the subject matter of reference before the Civil Court. However, the court below having allowed the application impleading the said respondents, the petitioner is before this Court.

2. The question whether the court below could have impleaded and permitted such claimants to enter appearance in the pending proceedings in the circumstances as aforesaid, is no longer *res integra* and is answered in the decision of the Supreme Court in *Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen and Another Vs. Syed Zindasha and Others*, .

It was a case where the appellant therein had claimed himself to be a Muthavalli of Sha Madhari Diwan Wakf. The properties were acquired by the State of Tamil Nadu in terms of the provisions of the Land Acquisition Act, 1894 and the appellant as a "person interested" took part in the proceedings for making an award. Since he was not satisfied with the quantum of compensation awarded by the Land Acquisition Officer, he sought for a reference for enhancement, thereof, pursuant to which the reference was made to the Civil Court. Prior to the said reference there was a suit for recovery of possession of certain properties and damages, instituted by the father of appellant No. 2, therein. The said suit was decreed holding that the properties in question were Wakf properties and the plaintiff in the suit was the Muthavalli thereof. This was challenged in an appeal. The appeal was dismissed and a second appeal preferred against the said dismissal of the appeal, was also dismissed holding that once the property had been dedicated to Wakf, no question of joint ownership of the properties, by any individuals in respect thereof, would arise.

It was claimed before the Apex Court that appellant No. 2 was said to have been appointed as a temporary Muthavalli of the Wakf. In the reference proceedings, an application was filed by respondent No. 1, in the SLP before the Apex Court, seeking to implead himself as a party therein claiming that he was interested in the subject matter of the property and that he was a co-sharer. The said application was allowed, which was affirmed in a revision petition and thereafter, the petitioner was before the Apex Court. Therefore, the Apex Court was called upon to decide whether the impleading application could have been allowed in the reference proceedings.

The Apex Court has held that the Land Acquisition Act, 1894 is a self-contained Code. It not only provides for the mode and manner in which the acquisition proceedings are initiated but also the mode and manner in which the proceedings for making an award as also the mode and manner in which an application for reference by a person dissatisfied therewith is to be made. A reference may be prayed for by a person interested in the proceeding. Ordinarily, he should be a party to the proceedings for making an award. He has to make an application seeking reference, before the Collector of the District within the time specified

thereunder. The petition may be as regards the measurement of land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation amongst the persons interested. The Reference Court, at the same time is not a court of original jurisdiction. It derives jurisdiction only in terms of the order of reference. The manner in which the reference is to be made and the statement required to be made by the Collector or the Land Acquisition Officer has been specified in Section 19 of the Act. The lis between the parties to the reference, meaning thereby a person interested and the State, when is with regard to the quantum of compensation, the Reference Court would only derive jurisdiction from the terms of reference. Even otherwise, a civil court can direct impleadment of a third party in a suit only in a case where he is a proper or necessary party and otherwise has an interest in the subject matter of the suit. Even a Civil Court ordinarily would not entertain a petition for impleadment of a third party in a lis pending before it which would enlarge the scope and ambit of the dispute between the parties. In the event, there is a dispute in regard to the title or apportionment of the amount of compensation, a proper reference has to be made. Only when such a reference is made, the dispute can be gone into by the reference court.

The apex court has referred to and relied upon the following authorities, in the above decision, to which a useful reference may be made.

(1) K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others,

This was an appeal before the apex court against a judgment of the High Court of Andhra Pradesh.

The brief facts were that certain lands belonging to the appellants were acquired by the State. The Land Acquisition Officer had fixed certain amount of money per acre in respect of the lands. The Civil Court however, proceeded to grant a uniform rate of higher compensation. There were disputes with regard to the entitlement of the compensation. The Land Acquisition Officer therefore had made a reference to the Court for the apportionment of the compensation among various claimants. Six of the appellants had not accepted the award and had made applications in writing to the Land Acquisition Officer within the time allowed by law, seeking reference of the matter for determination by the court. No reference was made by the Land Acquisition Officer on those applications. When the matter was before the reference court, the court proceeded on the footing that the reference made to it by the Land Acquisition Officer was not merely limited to the apportionment of the compensation, but also with respect of the amount of compensation. No objection was raised on behalf of the State that in the absence of any reference upon the applications of the six of the appellants, the court would have no jurisdiction. When the matter was before the High Court by way of an appeal from the judgment of the reference court, an objection was raised as regards lack of jurisdiction of the reference court. The High Court negatived the objection, but however, reversed the finding of the court as to the amount of compensation. The appeal before the apex court was

against that judgment of the High Court.

It was contended by the appellants that by reason of the failure of the State to raise a plea as to there being no reference before the Subordinate Judge, the State must be deemed to have waived the point. The apex court, while negating such a contention, held that Section 12(1) of the Land Acquisition Act, 1894 (Hereinafter referred to as the "LA Act", for brevity) provides that after an award is filed in the Collector's Office, it shall be final and conclusive evidence as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among the persons interested. The only manner in which finality of the award can be called into question is by resorting to the provisions of Section 18 of the LA Act. Subsection (1) reads thus:

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

The proviso to Sub-section (2) prescribes the time within which an application under sub-section (1) is to be made. Section 19 provides for making of a reference by the Collector and specifies the matters which are to be comprised in that reference. Thus the matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made, that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contention of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. When the reference was only in regard to the apportionment of the compensation amongst various claimants, it would not invest the court with the jurisdiction to consider a matter not directly connected with it. This is not a mere technicality for as pointed out by the Privy Council in *Nusserwanjee Pestonjee vs. Meer Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor*, 6 Moors Indian Appeals 134, wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with in order to create and raise the jurisdiction and if they are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference insofar as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence.

In *Seth Badri Prasad and Others Vs. Seth Nagarmal and Others*, , the apex court has held that even the bar of illegality of a transaction though not pleaded in the

courts below, can be allowed to be pleaded in the apex court if it appears on the face of the pleadings in the case.

Smt. Ambey Devi Vs. State of Bihar and another, .

This appeal by special leave was from a judgment of the Patna High Court. The question that was considered was whether one of the co-sharers can claim enhancement of compensation without seeking reference u/s 18 of the LA Act, in a reference, at the instance of one of the co-sharers.

The facts were that 25 acres of land was acquired u/s 4(1) of the LA Act for a public purpose. In an inquiry u/s 11 by the Land Acquisition Officer, the appellant had laid claim to one-fourth share of the compensation along with other co-owners. It was found as a fact that the compensation was apportioned into one-fourth share to each of the co-owners and the parties received the same. One of the co-sharers sought for reference to the Civil Court u/s 18. It was made. The Court had enhanced the compensation. Thereafter, the appellant filed an appeal claiming enhancement of compensation in respect of her land on par with other co-owners. The claim was rejected by the High Court holding that the appellant had not made an application u/s 18 after the award was made by the Collector and therefore, was not entitled to the enhanced compensation. Hence, the appeal by special leave to the apex court.

It was contended that u/s 53 of the LA Act, the procedure prescribed under the CPC is applicable to proceedings of the Civil Court unless they are inconsistent with any of the provisions contained in the Act. Since Order 1 Rule 10 of the CPC requires impleadment of all necessary and proper parties, the appellant being a necessary party to the proceedings, she was entitled to the same compensation as was awarded to other claimants. This contention was negated by the apex court and it was held that the Scheme of the Act is inconsistent with the CPC regarding entitlement to claim compensation under the LA Act. The CPC provides the procedural format to adjudicate a dispute after the award is made u/s 11 of the LA Act. The Land Acquisition Officer was required to issue notice u/s 12 to the parties. As contemplated u/s 30 of the LA Act, the appellant was 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 either to the extent of land, classification, value of the land or apportionment of the compensation and upon receipt thereof, reference to the court would be made. The applicant would be required to state the grounds on which objections are raised to the award of compensation etc. A valid reference is a pre-condition for the civil court to adjudicate the objections raised in the reference application. Since it was found that the appellant had 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 LA Act would not arise. It was further laid down that the procedure prescribed under Sections 18 and 30 of the LA Act are inconsistent with the procedure prescribed

under Order 1 Rule 10 of the CPC, which provision would apply to implead a necessary or a proper party to ensure a complete adjudication of all disputes between the parties, who may be bound by the decision. That is a question which would not arise in the procedure prescribed under the LA Act. It is upon a valid reference being made, the Civil Court would get jurisdiction to conduct an inquiry and it is at that stage, the procedure of a trial as contemplated under the CPC would apply in terms of Section 53 of the Act.

Chief Justice of Andhra Pradesh and Others vs. L.V.A. Dikshitulu and others, AIR 1979 SC 198, and Chandrabhai K. Bhoir and Others Vs. Krishna Arjun Bhoir and Others, .

These decisions were relied upon for the proposition that it is well settled as to no amount of consent could confer jurisdiction on a court and when it is known that the court had no jurisdiction, any order passed by it is a nullity. When the court lacks inherent jurisdiction, the procedural provisions of estoppel, waiver or res judicata shall also not apply.

In the light of the legal principles enunciated above, the reference being limited to the enhancement of compensation in the case on hand and there being no other issue before the Reference Court, the court having permitted respondents 3 to 11 to come on record on their contention that they have an interest in the property and that they would be entitled to any part of the enhanced compensation, was not capable of being considered by the Reference Court, when there was no such issue referred to it and such application permitting the respondents to come on record is bad in law and is accordingly, quashed. The petition is allowed in terms as above.