

(1974) 09 KL CK 0008
In the High Court Of Kerala
Case No : Appeal Suit No. 317 of 1969

Thevaril Ranee Sidhan and Another	APPELLANT
Vs	
The Special Tahsildar for Land Acquisition and Others	RESPONDENT

Date of Decision : 11-09-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 59
Kerala Land Acquisition Act, 1961 — Section 32, 33(2)

Citation : AIR 1975 Ker 27

Hon'ble Judges : V.P. Gopalan Nambiyar, J; T. Chandrasekhara Menon, J; George Vadakkal, J

Bench : Full Bench

Advocate : T.L. Viswanatha Iyer and E.R. Venkiteswaran, for the Appellant;

Final Decision : Partly Allowed

Judgement

George Vadakkal, J.—A plot of land measuring 1 acre 48 cents was acquired by the State under the Kerala Land Acquisition Act, 1961 (for brevity, the Act). The whole compensation amount was deposited as required by Section 33 (2) of the Act in the lower court, and a reference was issued u/s 32 thereof. The appellants in the first instance filed a statement before the lower court claiming compensation in respect of 16 cents of the acquired land. Subsequently, by an additional statement filed by them on 13-6-1968 and received by the lower court they claimed compensation for another 8 cents of land also. In respect of these 8 cents of land the 13th respondent had already claimed compensation. The lower court declined to decide the appellants' claim relating to the 8 cents of land on merits for the reason that they had not advanced such a claim before the Land Acquisition Officer, and also on the ground that such a dispute has not been referred to the court. This appeal is against that decision.

2. The primary function of the Collector under the Act is acquisition of land needed for public purpose, after marking out the same, determining the area thereof, and settling compensation payable therefor. He has for this purpose to

make an award of the true area of the land, and of the compensation, which according to him is payable for that land. This award is "strictly speaking an offer made to the person interested in land notified for acquisition" -- Dr. G.H. Grant Vs. State of Bihar, : (1965) 3 SCR 576 at p. 584.

3. The determination of the "person (or persons) interested" is only an ancillary or secondary function of the Collector. The expression "person interested" as defined in Section 2 (2) of the Act "includes all persons claiming or entitled to claim an interest in compensation payable on account of the acquisition of land". Several persons may have different interests in the notified land as a whole or in different portions thereof. There may also be dispute as to the person who is entitled to the compensation amount or part thereof. The person or persons lawfully entitled to the compensation amount, therefore, will have to be determined and/or the said amount apportioned amongst different persons, resolving the inter se disputes, and evaluating the different interests. The Collector will very often find that the resolution of these questions is beyond his competence. The statute, therefore, gives him the option either to proceed to determine the persons entitled and to apportion the amount himself, and to make an award of such apportionment, or, to refer the dispute to the court. If he proceeds to apportion the compensation amount himself, Section 11 (iii) requires him to apportion the 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". A "person interested", if he does not accept the apportionment or the decision as to the person entitled made by the Collector can, u/s 20 of the Act, require him within the time limits prescribed thereunder to refer the matter of apportionment or the question as to who is entitled to the compensation amount or part thereof to the court.

4. If the Collector does not apportion the compensation amount himself, he must u/s 32 refer to the Court the dispute as to the apportionment of the same or any part thereof and the question as to whom the same or any part thereof is payable, depositing the compensation amount or part thereof as the case may be u/s 33 (2) of the Act. However, as already said the Collector is not bound to make such a reference. It is pointed out in Dr. G.H. Grant Vs. State of Bihar, : (1965) 3 SCR 576 already mentioned that the Collector "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". The same decision is also authority for holding that "a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing (the award), raise a dispute -as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference u/s 30, (Section 32 of the Kerala Act), for determination of his right to compensation Which may have existed before the award, or which may have devolved upon him since the award".

5. The person lawfully entitled to the whole or any part of the compensation, has also the right to institute a suit against the person who receives the whole or any part of the same for realisation of it. This is provided for by the third proviso to Section 33 (2) of the Act.

6. Whether a person can avail of these proceedings only in the alternative or whether he can resort to all of them successively, is another question and does not arise here.

7. The above discussion makes it abundantly clear that the statute has taken care to see that no person lawfully entitled to compensation is deprived of the same, and that he has a right to have his claim decided by the court on a reference u/s 20 or Section 32 of the Act, or in a suit instituted by him in that behalf. In *Dr. G.H. Grant Vs. State of Bihar*, the Supreme Court said :

"The scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the persons who are entitled to receive compensation."

"..... The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference u/s 18 or u/s 30 or in a separate suit."

8. Next, we will examine the nature of the proceedings in court on a reference u/s 32 of the Act. In *Ramchandra Rao v. Ramchandra Rao* AIR 122 PC 80 Lord Buckmaster in his judgment rendered on behalf of the Board said (page 63):

"When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end, The duty of the Collector in case of dispute as to the relative rights of the persons, together entitled to the money, is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be..... How the proceedings were commenced is a matter that is not material, provided that they were instituted in the manner that gave the Court jurisdiction, for they ended in a decree made by the High Court and appealable to this Board.

..... The award as constituted by statute is nothing, but an award which states the area of the land, the compensation to "be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information meaning thereby people whose interests are not in dispute but from the moment when the sum has been deposited in Court u/s 31 (2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest."

Raman Nayar J. (as he then was) said on behalf of a Division Bench of this Court in Chandan Vydiar v. Chakkutty Vydiar 1969 Ker LR 691 :

"A reference under the Land Acquisition Act regarding any dispute as to the persons to whom the compensation is payable is really in the nature of an interpleader suit, The proceeding is a combination of as many suits as there are claims and each claimant is both plaintiff and defendant. The proper procedure in such cases, we should think, is for the court to call upon each claimant to file a statement of his claim -- this statement would be his plaint. In answer to the claim thus made, the defendants, namely, the contesting claimants should be given the opportunity of filing statements --these would be their written statements. Then issues should be settled and the trial proceeded with in the ordinary manner."

9. These decisions make it clear, (and we think, with respect, these to be the correct principles) that the functions of the Collector making the award cease once the amount is deposited in court, and "all that is left is a dispute between interested people as to the extent of their interest" in the acquired property "represented by a sum of money paid into court" in respect of which dispute "the parties can proceed to litigate in the ordinary way or in the ordinary manner to determine what their right and title to the property may be". Shortly, once the dispute is before court u/s 32, a person lawfully entitled to compensation or part thereof is entitled to establish his right as against any person as in a suit. The Court will, in deciding the dispute, be guided, governed and regulated by the provisions of the Code of Civil Procedure, 1908 (Section 59 of the Act says so), and in our view, by the provisions of the Evidence Act, 1872. Here it is necessary to advert to one rule of evidence contained in the Act itself. We refer to Section 31 of the Act whereby an award of apportionment by the Collector based on agreement of persons interested and specifying the particulars of such apportionment is made conclusive evidence of the correctness of apportionment, as between such persons, viz., persons who have agreed to the apportionment. But for this limitation there is nothing in the Act which will preclude a person lawfully entitled to compensation amount, or part thereof, from claiming and establishing, that he as the real person interested is entitled to the same. Failure on his part to claim the compensation or part thereof, or his failure to dispute the claims advanced by others, or, even an admission that another is entitled to the compensation amount, in proceedings before the Collector, cannot in our view, preclude him from advancing his claim and establishing the same, at any subsequent stage, before the Collector or before the Court, so long as the rule of conclusive evidence stated in Section 31 of the Act is not in his way. His conduct, failure to claim or to dispute another's claim, or the admission, as the case may be, can if established, be a relevant fact under the ordinary rules of evidence in assessing the merits of his claim, but he is under those rules of evidence also entitled to explain away these facts, and to establish his title to compensation or part thereof.

10. We would like to caution that the principles stated above will have application only to the subject-matter of enquiry before the court on a reference u/s 32 of the Act. The subject-matter of enquiry will depend upon the scope of reference u/s 32. The court can so far as the subject-matter of the enquiry is concerned, exercise all powers vested in it under the Code of Civil Procedure, 1908, and decide all questions arising in relation to it applying the ordinary rules of evidence, but subject to the rule of conclusive evidence, stated in Section 31 of the Act. For example, if the reference is only as to part of the compensation amount and as to the persons to whom the same is payable, the court can decide only the questions arising in relation to that part of the compensation amount. In respect of that much compensation amount, which should necessarily be in deposit in court, the proceedings will be in the nature of an interpleader suit to which the principles above discussed would be applicable. This is clear from the use of the words "such dispute" in Section 32 of the Act. These words refer to a dispute "as to the apportionment of the amount of compensation or any part thereof, or as to the persons to whom the amount of compensation or any part thereof is payable", and mean a dispute as to the apportionment of the whole of the compensation amount or the persons to whom the same is payable, or, as the case may be, a dispute as to the apportionment of any part of the amount of compensation or as to the persons to whom any part thereof is payable.

11. The Division Bench (Poti and Viswanatha Iyer, JJ.) which referred this case to Full Bench doubted the correctness of two decisions of this Court. *Padmanabha Menon v. Bhaskara Menon* 1963 Ker LT 595 and *Lakshmikutty Amma v. Velappa Nair* 1972 Ker LT 884 : AIR 1972 Ker 79, In both these cases the Court, in proceedings pending before it on reference u/s 27 of the Travancore Land Acquisition Act, 1089 in one case, and u/s 32 of the Act in the other, allowed persons who were not parties to the proceedings before the Land Acquisition Officer to come on the party array and agitate their claims; and this Court held that the reference court is competent to do so. Mathew J. in the first case, on behalf of the Court said :

"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 Order 1, Rule 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." And in the other case Krishna-moorthy Iyer. J. said :

"By virtue of Section 59 of the Kerala Act. Order 1, Rule 10, C.P.C., is made applicable to proceedings under the Land Acquisition Act if there is nothing inconsistent in the Land Acquisition Act to the applicability of the said rule. The right of the real owner of the property to get compensation is safeguarded by the third proviso to Section 33 of the Land Acquisition Act....."

"When Section 33, 3rd proviso has safeguarded the right of the real owner of the property to receive the compensation money when such a person has been directed to apply before the court in which a reference as to apportionment is pending that is sufficient to confer jurisdiction in a reference u/s 32 of the Kerala Act to implead additional parties. If any jurisdiction is necessary this direction itself is a conferment of jurisdiction by the Land Acquisition Officer to the Civil Court. The objection raised to the impleading of the second respondent as additional party cannot therefore stand."

The Supreme Court in Grant's case said:

"But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference u/s 30, for determination of his right to compensation which may have existed before the award, or which may have devolved upon him since the award." (underlining by us)

We think the decisions are correct and see no reason to doubt them.

12. We are also of the view that the reasons given by Weston, J. in *Special Land Acquisition Officer v. Uned Laloo*. AIR 1942 Sind 82 are forceful and weighty, and would therefore extract the same:

"An argument which occurs to me in favour of the wider view is that u/s 18, Land Acquisition Act, a "person interested" can require a reference at any time within a period of six months from the date of the award, even if such a person has not been in receipt of a notice u/s 12 of the Act and has not appeared or been represented before the Collector. If the Collector has made the present reference u/s 18, then the present applicants could, in effect, have obtained their joinder to such reference by an application u/s 18 and within six months of the date of the award. Where as in the present case the Collector has made the reference u/s 30, then on the narrow interpretation sought of the word "dispute" in Section 30, the applicants could never obtain their joinder to such reference. I think, the view of the Allahabad High Court is to be preferred, and I hold, therefore, having regard to Section 53, Land Acquisition Act, which states that the provisions of the CPC shall apply to all proceedings before the Court under the Act, that there is no reason why a person interested should not apply to be joined as a party to a reference made by the Collector although his name does not appear in the

reference made, provided the question raised by him is in essence the dispute referred, as in the present case it is, namely, the division of the money among the persons lawfully entitled to receive it"

We are in respectful agreement with the view expressed in the above case. The Sind case followed the decision of the Allahabad High Court in Kishan Chand v. Jagannath Prasad ILR (1903) All 133. Both the decisions of this Court also followed the abovesaid decision of the Allahabad High Court. The earlier decision of this Court relied on the Sind case also.

13. In K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others, the Supreme Court held that on a reference made to the Court for apportionment of compensation amount among the various claimants the court is incompetent to decide the question of enhancement of compensation. Want of jurisdiction was held to be inherent, so that failure to raise the question at an earlier stage would not preclude the same being raised at a later stage. This decision, very much relied on by the lower court, has no application to the present case.

14. The other two decisions relied on by the lower court are Secretary of State for India Vs. Fakir Mohammad Mandal and Others, and Indumati Debi Vs. Tulsi Thahurani and Others, , The reference in the former case was one u/s 18 of the Indian Land Acquisition Act 1894, with respect to the valuation of the property. This case cannot there fore govern a case arising on a reference u/s 30 of that Act corresponding to Section 32 of the Kerala Act. This is clear from the decision of the Privy Council in AIR 1930 64 (Privy Council) referred to by the learned counsel for the 13th respondent That was also a case that arose on a reference u/ s 15 of the Indian Act. The Privy Council referring to Sections 20 and 21 (corresponding to Sections 22 and 23 of the Kerala Act) occurring in Part III of the Act emphasised the restricted nature of the enquiry on a reference u/s 18 when the Board spoke of the jurisdiction of the reference court as "a special one and strictly limited by the terms of these provisions" and as "confined to a consideration of the specific objection taken to the Collector's award". It should be remembered that a reference u/s 18 (Section 20 of the Act) can be had only on one or the other, or some, or all of the four grounds of objections mentioned in that provision and specified in an application by the person interested. Though these aspects were adverted to in Dr. G.H. Grant Vs. State of Bihar, (the Privy Council case as such appears to have been not noticed) it was held in that case that the words of Section 30 can reasonably be construed to mean that the jurisdiction of the court is confined to a consideration of the dispute that is expressly referred to it by the Collector, and that therefore, only persons who do not seek to raise any new dispute but want to place other materials before the court in connection with the dispute, can be impleaded as additional parties. If this means that a person who wants to be added as a party "for determination of his right to compensation which existed before the award or which devolved upon him since the award" cannot be impleaded or that he cannot agitate his claims, with respect, we are afraid the decision in Indumati Debi's case, is no

more good law after the decision of the Supreme Court in Grant's case, particularly in view of the distinction pointed out by that Court between "the powers exercisable by the Collector u/s 18 (1) and u/s 30" as powers which "may be invoked in contingencies which do not overlap."

15. The reference by the Collector in this case is:

"In view of the dispute and in view of the fact that minors are involved, the amount is deposited u/s 32 (2) and this ref. issued u/s 32 for reasons shown in the award,"

The relevant portion of the award is:

"There is thus a dispute regarding the apportionment of the land value Minors are also involved. In view of this the sum of Rs. 33,255.65 mentioned above will be deposited in the Sub-Court, Kozhikode u/s 33 (2) of the K L. A. Act, 1961 in the names of the following persons and a ref. issued to the court u/s 32."

Names of 17 persons including the appellants and the 13th respondent are given thereunder.

16. We hold that in respect of the sum of Rs. 33,255.65 in deposit in the lower court and which represents the whole of the acquired land of 1 acre 48 cents, the proceedings in that court are in the nature of an interpleader suit, and that the parties to these proceedings (no question of impleadment is involved in this case -- the appellants were parties to the proceedings before the Collector) are free to litigate in the ordinary way as in an ordinary suit of the nature indicated above to determine what their respective rights in respect of the said amount, or any portion thereof are. We further hold that the lower court was not right in refusing to decide on merits the claim advanced by the appellants in respect of the amount of compensation payable for the 8 cents of land, a claim allowed to be advanced by receiving their additional statement filed on 13-6-1968. We set aside the judgment and decree of the lower court to the extent they have awarded 50% of the compensation payable for these "8 cents of land to the 14th claimant -- 13th respondent, herein. We direct the lower court to settle appropriate issues arising out of the statements filed by the appellants and 13th respondent in relation to their rival claims in respect of the 50% of the compensation payable for the abovesaid 8 cents of land, and try the same in the light of what is stated above. This appeal is allowed to the above extent, and the decree and judgment of the lower court in other respects are confirmed. The parties will suffer their respective costs till now incurred.