
(2001) 09 AP CK 0092
In the Andhra Pradesh High Court
Case No : CRP No. 725 of 1999

Vaggu Agamaiah and Others

APPELLANT

Vs

South Central Railway, Secunderabad and Another

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Land Acquisition Act, 1894 — Section 18

Citation : (2002) 2 ALD 388

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : E.S. Ramachandra Murthy, for the Appellant; Gowri Shankar Sanghi, SC for Railways, for the Respondent

Final Decision : Allowed

Judgement

1. This revision is filed by the unsuccessful Decree-holders in EA No. 130 of 1998 in EP No. 10 of 1992 in OP No.98 of 1996 on the file of the Principal Senior Civil Judge, Ranga Reddy.

2. The 1st respondent, South Central Railway, represented by its Deputy Chief Engineer, Construction, Secunderabad filed an application EA No.130 of 1998 in EP No. 10 of 1992 in OP No.98 of 1986 on the file of Principal Senior Civil Judge, Ranga Reddy under Order 1, Rule 10 CPC read with Section 151 CPC to be impleaded as a party to the proceeding. The contention of the 1st respondent, proposed party who intends to come on record is that the land was acquired at Kukatpally and Babbuguda village for the purpose of construction of goods shed at Sanathnagar Railway Station and the South Central Railway is an interested party in the said acquisition, but the Land Acquisition Officer alone was made party and the South Central Railway had appointed their own Advocate to defend their case and the Decree-holders filed EP seeking more amount than to which they are entitled to and hence there is a necessity to implead South Central Railway as a party to the litigation for the purpose of protecting the interests of

the South Central Railway and also is public interest inasmuch as the South Central Railway is required to pay the amount from its funds. The revision Petitioners-Decree-holders had taken a stand that the Land Acquisition Officer-Special Deputy Collector, Land Acquisition (General), Hyderabad had acquired the land under the Land Acquisition Act and an award was made by him which was referred u/s 18 of the Land Acquisition Act and the decree-holders are not claiming any amount more than the amount to which they are entitled to in accordance with the decree and in accordance with law and hence the proposed party need not be impleaded as a party in the execution proceeding. The Court below after hearing the parties had permitted the proposed party to come on record as 2nd respondent in the main EP to the limited extent of assisting the Court in arriving at a conclusion for calculation of amounts and complying the orders of the Court for payment of the decretal amount as and when it becomes due on such ascertainment. The Decree-holders aggrieved by the said order had filed the present Civil Revision Petition.

3. Sree Srinivas representing Sri E.S. Ramachandra Murthy, the learned Counsel for the revision petitioners had made his submissions stating that Order 1, Rule 10 CPC is not at all applicable to execution proceeding and even otherwise the execution proceeding itself arises out of a decree made in OP No.98 of 1986 which is in relation to reference u/s 18 of the Land Acquisition Act and in such a proceeding Order 1, Rule 10 CPC cannot be invoked. The learned Counsel also had placed reliance on Neyveli Lignite Corporation Ltd. Vs. Special Tahsildar Land Acquisition and Others, and had contended that the proposed party cannot be said to be a person interested as contemplated under Sections 3(b), 19(1)(d), 20, 50 Clause (2) Explanation of Land Acquisition Act. The learned Counsel also had drawn my attention to several other aspects which may not be relevant for the purpose of deciding the present civil revision petition.

4. Sri Gowri Shankar Sanghi, Standing Counsel for Railways had contended that the application was rightly allowed by the Court below only to the limited extent and the South Central Railway being the beneficiary it can be taken that it is a party interested in the litigation and hence the impugned order need not be disturbed in exercising the revisional jurisdiction. The learned Counsel also had placed strong reliance on the decision of Apex Court in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.,

5. Heard both the Counsel and also perused all the records. There is no much controversy relating to the factual aspects. The only legal question that falls for consideration in the present revision is whether a non-party to the litigation in a reference u/s 18 of the Land Acquisition Act be brought on record, that too at the stage of execution. Order 1 in the 1st Schedule of the Code of Civil Procedure, hereinafter in short referred to as "Code" deals with parties to suit. Order 1 Rule 10(2) of the Code reads as follows:

"The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be

just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

The words ".....whether as plaintiff or defendant....." clearly go to show that this provision can be invoked only when the original or part proceeding is pending and not at the stage of execution. Hence the Court below had committed a jurisdictional error in allowing the application to implead a party under Order 1, Rule 10(2) of the Code at the stage of execution. It is relevant to note here that in the decision 2nd cited supra it was held that when the land is acquired for the benefit of a company or for some other agency such party may fall under "person interested" and the expression "person interested" has to be given a liberal interpretation. However, in the decision referred (1) supra, while dealing with the aspect of "person interested" it was held that the person for whose benefit the acquisition was made cannot be said to be person interested and he cannot be made a party to a proceeding u/s 18 of the Land Acquisition Act. In M/s. Cyrus Investment (P) Ltd., Hyderabad and another Vs. Mohd. Fareeduddin Khan and others, , the Division Bench while dealing with the question of impleading a party in a reference u/s 18 or 30 of the Land Acquisition Act who was not a party before the Land Acquisition Officer, in fact held that the Court cannot implead a party after reference who is not a party before the Land Acquisition Officer by invoking Order 1 Rule 10 CPC. Even in this view of the matter, the impugned order is not sustainable in law.

6. Hence the impugned order dated 25-10-1988 in EA No.130 of 1998 in EP No.10 of 1992 in OP No.98 of 1986 on the file of Principal Senior Civil Judge, Ranga Reddy is hereby set-aside and the civil revision petition is allowed, but in the facts and circumstances of the case, each party to bear their own costs.