

Shivaji and ors. Vs. Special Land Acquisition Officer and anr.

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Court : Mumbai

Decided On : Aug-13-2002

Reported in : 2003(1)ALLMR633; 2003(1)BomCR108; (2003)1BOMLR691; 2002(4)MhLj778

Judge : V.G. Palshikar, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 18 and 19; Code of Civil Procedure (CPC) - Order 22, Rules 3 and 4

Appeal No. : Civil Rev. Appln. No. 442 of 1996

Appellant : Shivaji and ors.

Respondent : Special Land Acquisition Officer and anr.

Advocate for Def. : S.G. Loney, Assistant Government Pleader

Advocate for Pet/Ap. : V.V. Deo, Adv.

Disposition : Application allowed

Judgement :

V.G. Palshikar, J.

1. This revision application is directed against the order dated 4-1-1996 rejecting an application by the present applicants for substitution of their names as legal

representatives of one Janglu, who was the original landholder of the land in question.

2. Facts not in dispute stated briefly are :

That Revenue Case No. 22/A-65/78-79 was started by the Special Land Acquisition Officer, Nagpur for acquiring certain lands for a public purpose. Certain lands belonging to Janglu s/o Bhagwan Wanjari were also acquired and an award was, therefore, made ultimately by the Special Land Acquisition Officer on 30-10-1983. Notice of making the award was received by Janglu the original landholder on 2-11-1983. He, therefore, made an application under Section 18 of the Land Acquisition Act requiring making of a reference under that section as he was not satisfied by the amount of compensation awarded for the acquisition of his land. After this application under Section 18 was made, the original landholder Janglu died on 1-3-1984.

3. On 7-7-1984 an application along with Vakalatnama was filed before the Special Land Acquisition Officer by the present applicants seeking the substitution of their names as legal representatives of deceased Janglu as the litigation survived the deceased and the cause of action was liable to be inherited by the petitioners. This application was not adjudicated upon by the Special Land Acquisition Officer. Somewhere in 1986 he made the reference under Section 18 of the Land Acquisition Act and transmitted the reference to the appropriate Court as contemplated by that section. The original application claiming reference was treated as Claims Statement and State was asked to file its reply which came to be filed on 6-11-1987. Though an order calling for record of the main Land Acquisition Case was made, factually record was never produced and consequently, the Counsel for the applicants was under an impression that the original application dated 7-7-1984 for substitution must have been allowed and, therefore, proceeded to conduct the reference on behalf of the applicants.

4. This case along with ten other references made out of same acquisition proceedings were pending before the same Judge and those matters were adjourned from time to time from one Court to another in the Senior Division Courts at Nagpur. Ultimately, 7th Joint Civil Judge, Senior Division took up these

matters for adjudication. On 13-9-1995 the Counsel for the applicants made an application to take up this case along with Land Acquisition Case Nos. 4 and 5 of 1987 as they arise out of the same award and common evidence would be required. This request was granted by the Court. When the Counsel on 13-9-1995 was examining the record it came to his knowledge that the reference has been made only in the name of Janglu, the deceased owner of the property and no substitution has taken place though an application to that effect was made as back as on 7-7-1984.

5. On 16-10-1995, therefore, an application was filed in the Court of Civil Judge, Senior Division (7th Joint) seeking substitution of the present applicants. However, the learned Judge without calling for the original reference case of the Land Acquisition Officer rejected the application by his order dated 30-11-1995 and held that the reference abated due to death of Jangiu. An application for setting aside abatement was rejected by the Court on 4-1-1996. This Revision Application is, therefore, directed against the orders dated 30-11-1995 and 4-1-1996 on the grounds mentioned in the petition as also canvassed across the Bar.

6. Shri V.V. Deo, the learned Counsel for the applicants, has submitted that the learned trial Judge committed an error of law in rejecting the application for setting aside abatement as also the order rejecting the application for substitution. After narrating the facts as are stated above, he contended that it is obvious from the records and facts narrated above that an application for substitution was made before the Sub-Divisional Officer or Special Land Acquisition Officer before he made a reference to the Civil Court. It was, therefore, a statutory duty of the Special Land Acquisition Officer to consider the said application and decide the same before making an order of reference. The Special Land Acquisition officer failed to discharge his statutory duty and for that reason, the applicants who are legal representatives of the original owner cannot be deprived of their right to claim higher compensation. They cannot be penalised for the mistake committed by the Special Land Acquisition Officer.

7. Shir. S.G. Loney, the learned Assistant Government Pleader appearing on behalf of the respondents, opposed the application and submitted that

the applicants not being party to the reference could not apply for being joined as parties under Order 1, Rule 10 of Civil Procedure Code or for that matter under any provision and placed reliance on the judgment of this Court in the case of Dattaram Deu Desai and Ors. v. Nirakar Devasthan of Palolem, Goa reported in 2000(3) Mh.L.J. 77 and that of Supreme Court of India in the case of Smt. Ambey Devi v. State of Bihar and Anr. reported in : [1996]3SCR303 . The learned Counsel contended that the applicants not being parties to the reference as made by the Special Land Acquisition Officer, they could not apply for addition of parties and, therefore, the application was rightly rejected.

8. I have to examine these contentions in the light of the provisions pertaining thereto. The application to bring on record the names of applicants (legal representatives) is the title of the application filed in the Court on 16-10-1995 in Land Acquisition Case No. 11/87 on behalf of the applicants. The facts are narrated and it is pointed out that they are liable to be brought on record as legal representatives of Janglu. There is a clear mention in this application of the earlier application filed in July, 1984 before the Special Land Acquisition Officer and the cryptic reply filed on behalf of the respondent does not deny this aspect. Factually, throughout this case there is no denial on the part of the Special Land Acquisition Officer that an application dated 7-7-1984 was made before the Land Acquisition Officer.

9. Section 18 of the [Land Acquisition Act, 1894](#) reads as under :--

'Section 18(1) Any person interested who has not accepted the award or the amendment thereof 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 the compensation the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The amendment application shall state the grounds on which objection to the award or the amendment is taken : Provided that every such application shall be made, --

(a) if the person making it was present or represented before the Collector at the time when he made his award or the amendment within six weeks from the date of the Collector's award or the amendment,

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, Sub-section (2), or within six months from the date of the Collector's award or the amendment, whichever period shall first expire.

(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908.'

It will be seen from the provisions of Section 18 quoted above that an application for reference may be made by any person interested who has not accepted the award. An application for reference, therefore, could be made by the legal representatives of the land owner. Sub-section (2) of Section 18 provides for the limitation within which it has to be made. Factually, in the present case such application was made by the land owner himself. An application for substitution of the legal representatives of Janglu, who was the original owner after his death was made before the Land Acquisition Officer. It was, therefore, necessary for the Land Acquisition Officer to decide that application and then proceed to forward the reference to the appropriate Court mentioned in Section 18. Section 19 enjoins upon the Collector the duty to state certain information in the reference and it requires that he shall state the names of persons whom he has reasons to think are interested in such land. It is, therefore, a statutory duty of the Special Land Acquisition Officer to inform the names of the persons whom he has reasons to believe are interested in the land. Consequently, when an application for substitution of the applicants as legal representatives of deceased Janglu was pending before him, it was his duty under Section 19 to decide that application and inform their names to the Court as contemplated by Section 19. Failure on the part of the Collector to do his duty cannot result in depriving the applicants of their right to claim enhanced compensation under Section 18 of the Act.

10. That takes us to the objections raised by Shri Loney, the learned Assistant Government Pleader, relying on certain decisions. Before we proceed to consider these cases, however, notice will have to be taken of the provisions of Order 1, Rule 10 and Order 22 of Civil Procedure Code. The provisions of Order 1, Rule 10 provide ample powers to the Court to add parties. It reads thus :--

'Order 1, Rule 10(2). Court may strike out or add parties. -- 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.'

It will be seen from the provisions quoted above that the Court may even suo motu add parties in the interest of justice. It is, therefore, a power of the Court to add parties to a suit either at the instance of the party already appearing before the Court or suo motu. This power of the Court is entirely different than the power vested in the Court under Order 22 which deals with death, marriage and insolvency of parties. Rule 1 provides that the death of the plaintiff and defendant shall not cause the suit to abate if the right to sue survives. In this case, right to sue survives on the death of the original landholder. Rules 3 and 4 of Order 22 then provide for making of an application for substitution by the legal representatives of the party dying as the right to sue or be sued survives under Rule 1. Thus, it is a statutory right of the legal representatives of a party dying during the pendency of a lis that is conferred by the provisions of Order 22. It is entirely different statutory right than the right conferred on the Court by Order 1, Rule 10, Civil Procedure Code. These two are distinct powers and proceedings are required to be taken for exercise of that power. This being the position in law, I will have to consider the impugned orders.

11. That takes us to the decision cited by the Assistant Government Pleader Shri Loney. The first decision is in the case of Smt. Ambey Devi v. State of Bihar and

Anr. reported in : [1996]3SCR303 where the Supreme Court of India was considering the provisions of Land Acquisition Act, i.e. Sections 18 and 30 and Order 1, Rule 10 of Civil Procedure Code. In that case, the question which fell for consideration of the Supreme Court was whether one of the co-sharers can claim enhancement of compensation without seeking reference under Section 18 of the Land Acquisition Act. It then went on to observe as under :--

'.....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 had not made any application under Section 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down under Section 23 of the Act, would arise only when a valid reference has been made under Section 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 claimant.'

The Supreme Court has thus held that the Civil Court gets jurisdiction to determine the compensation only after a valid reference has been made under Section 18 of the Act. It then proceeds to observe that if this is not done, i.e. valid reference is not made, then the Civil Court will not have the jurisdiction to entertain the matter and in this light it has been observed that the power under Order 1, Rule 10, Civil Procedure Code given to the Court by that Code cannot be exercised in a reference under Section 18 of the Act because that is to be entertained only at the instance of a person making an application to the Collector and the Collector making a reference to the Civil Court. This judgment was followed by our High Court in the decision in the case of Dattaram Deu Desai and Ors. v. Nirakar Devasthan of Palolem, Goa reported in 2000(3) Mh.L.J. 77. There, this Court was considering reference under Section 30 of the Land Acquisition Act and following the aforesaid decisions of the Supreme Court of India, it was held that a person who was not party to the proceedings before Land Acquisition Officer cannot be impleaded as a party in a reference under Section 18 of the Act. Here again the proposition is the same. Both the judgments, in my opinion, are not applicable in the present case as the facts in the present case are entirely different. In this case, the Court was called upon to exercise not its powers under Order 1, Rule 10, Civil

Procedure Code but a power under Order 22, Rules 3 and 4. This aspect has not been considered by the learned trial Judge. It will be seen that Order 22 confers a right on the legal representatives to continue the suit where the cause of action survives and that right was already exercised by the legal representatives by making an application for substitution before the Land Acquisition Officer. It was because of failure of duty by the Land Acquisition Officer that the substitution has not taken place and, therefore, a fresh application was made before the Civil Court. In Civil Court in the reference under Section 18 of the Land Acquisition Act deceased Janglu was a party. As is obvious from the provisions of Order 22, Civil Procedure Code the reference had, however, abated due to non substitution of the legal representatives of the deceased Janglu though cause of action did survive to them and, therefore, an application was made on behalf of those applicants for setting aside the abatement and for substitution. The learned Judge has ignored all these aspects while rejecting the applications by his cryptic orders challenged in this revision. It was the duty of the learned Judge to consider the application for setting aside abatement and grant substitution in the light of the circumstances pleaded in those applications before him. He should have seen that the death was pleaded as having taken place in 1984. An application being made for substitution in July, 1984 was also mentioned and both these averments have not been refuted by the State. The irresistible conclusion therefrom is that there was a failure on the part of the Land Acquisition Officer to perform his statutory duty enjoined on him by Section 19 of the Land Acquisition Act and it was in the light of this failure of Land Acquisition Officer that the question of delay in making an application for substitution and setting aside abatement is to be considered. The applicants were under bona fide belief that they have been duly substituted. That the belief was wrong may be said only by perusing the record of the land acquisition case from which this reference under Section 18 was made. Even that was not done by the learned Judge. In the absence of record, therefore, and in the face of positive averment that such an application was made, it was a jurisdictional error committed by the learned trial Judge in refusing to exercise his jurisdiction under Order 22.

12. Both the orders passed by him in the circumstances are unsustainable in law and same are, therefore, set aside. As a consequence of that, the abatement of

the reference as ordered by the learned trial Judge is also set aside. Application for substitution of the applicants is allowed and the matter is remitted back to the Civil Court for proceeding with adjudication of the reference on due substitution. The Civil Revision Application stands allowed. In the circumstances, there will be no order as to the costs.

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