

Sushila Vs. Assistant Commissioner

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Court : Karnataka

Decided On : Mar-13-1995

Reported in : ILR1995KAR1729

Judge : Kumar Rajaratnam, J.

Acts : Land Acquisition Act, 1894 - Sections 18; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10

Appeal No. : C.R.P. No. 3360 of 1993

Appellant : Sushila

Respondent : Assistant Commissioner

Advocate for Def. : N.B. Viswanath, Adv.

Advocate for Pet/Ap. : C.S. Kothavale, Adv.

Disposition : Civil revision petition allowed

Judgement :

ORDER

Kumar Rajaratnam, J.

1. This Civil Revision Petition is directed against the order dated 28.6.1993 passed in LAC 242/86 on the file of the Prl. Civil Judge, Chikodi dismissing IA.No. I under

Order 1 Rule 10 of CPC for an order to implead the petitioners as claimants.

2. The facts very briefly are that a Preliminary Notification was issued under Section 4(1) of the Land Acquisition Act which was published on 20.12.1977 with respect to the acquisition of the land belonging to the Temple known as Sri. Shidalingeshwar Devasthan. The claimant on behalf of the Temple was one Kalayya Girimallya Mathapati. The petitioners' mother Laxmibai died on 22.1.1979 who was claiming to be in possession of the land that was sought to be acquired even at the time of the Preliminary Notification. Subsequently a declaration was made under Section 6(1) of the Land Acquisition Act on 9.1.1980. After that on 19.10.1983, the petitioners herein, being the legal representatives of the said occupant late Smt. Laxmibai, sought for the grant of occupancy rights under Section 5 of the Karnataka Certain In arms Abolition Act, 1977 (Act 10 of 1978). But before the final orders were to be passed with regard to the occupancy rights with respect to the petitioners, an award came to be passed by the first respondent in LAQ SR 333 of 1977 on 14.5.1984. The said Kallayya Girimallayya Mathapati sought a Reference under Section 18(1) on behalf of the Trust Committee by a petition dated 31.5.1986. The Civil Court took up the Reference in LAC No. 242/1986. It is a common ground that the Reference is pending before the Civil Court. While the Reference was pending in the Civil Court, the Land Tribunal granted occupancy rights to the petitioners by an order dated 7.11.1988. Subsequently, the petitioners filed IA.No. I to implead themselves since according to them they were entitled to the benefit of the award and the original claimant had lost its right under the provisions of the Karnataka Certain Inams Abolition Act, 1977 and therefore, the petitioners stepped into the shoes of the claimant as they were entitled to prosecute the Civil Court Reference under Section 18(1) of the Land Acquisition Act, The learned Principal Civil Judge at Chikodi held that the petitioners are not entitled to be impleaded relying on the Judgment of this Court in the case of THE COLLECTOR OF CANARA v. RAMKRISHNA V DHANKAPPA AND ORS 1964 Mys. L.J. Supp 634. The learned Principal Civil Judge also relied on the case of BASALINGAPPA GOWDA AND ORS. v. NAGAMMA AND ANR AIR 1969 Mysore 313. and the case of COLLECTOR v. AMINCHAND : AIR1968 Delhi66 . The finding of the learned Principal Civil Judge is that the petitioners were not the parties in the original proceedings before the Land Acquisition Officer

and their claim to come on record cannot be accepted when the matter is pending in the Civil Court for Reference, In that view of the matter, the learned Principal Civil Judge dismissed IA.No. I.

3. The learned Counsel for the petitioners Mr. Kothavale drew my attention to a Judgment in the case of GRANT v. STATE OF BIHAR : [1965]3SCR576 . This is a case where during the pendency of the Reference the right accrued to the State under the provisions of the Bihar Land Reforms Act, Supreme Court held as follows at paragraph 17 :

'The right of the State of Bihar, arose on May 22, 1952 when the title to the land vested in it by virtue of the notification issued under the Bihar Land Reforms Act. There is nothing in the Land Acquisition. Act which prohibits, the Collector from making a reference under Section 30 for determination of the title of the person who has since the date of the award acquired a right to the compensation. If after a reference is made to the Court the person interested dies and his title devolves upon another person, because of inheritance, succession, insolvency, forfeiture, compulsory winding up or other form of statutory transfer, it would be open to the party upon whom the title has devolved to prosecute the claim which the person from whom the title has devolved could have prosecuted. In *Promotha Nath Mitra v. Rakhal Das Addy*. 11 Cal LJ 420, it was held that a reference made by the Collector under Section 30 of the Land Acquisition Act at the instance of a proprietor of land may be prosecuted by the purchaser of his rights after the award at a revenue auction. If the right to prosecute a reference by a person on whom the title of the person interested has devolved be granted, there is no reason why the right to claim a reference of a dispute about the person entitled; to compensation may not be exercised by the person on whom the title has devolved since the date of the award'.

4. The learned Counsel for the. petitioners also relied on a Judgment of Madras High Court in. the case of VENKATA KRISHNAYYA v. SECRETARY OF STATE AIR 1928 Madras 89, in which the Court has held :-

'Where during the pendency of a suit or appeal a person who had a decree in his favour and who was prima facie entitled to the property institutes or defends

proceedings in respect of property sought to be acquired, the proceedings can be continued by the person who ultimately succeeds in the litigation. Any order passed in respect of the property would enure for the benefit of the successful litigant and he is the person who on the reversal of the judgment of the lower court would be entitled to continue the proceedings'.

5. The other Judgments relied on by the learned Counsel for the petitioners are : [1976]1SCR487 Rikhu Dev Chela Bawa Harjug Dass v. Som Dass (deceased) through his Chela Shiamia Dass, 1976(1) KLR SN Page 8 Item 12 Devaki v. Spl. L.A.O. and 1982(1) KLJ 417 Sree Ramamandira Trust v. T. Muniswamappa. All these Judgments lay down the Rule that when a Reference is made with regard to the enhancement of compensation under Section 18(1) of the Land Acquisition Act and after a Reference is made to the Court, the person interested dies enhancement of compensation under Section 18(1) of the Land Acquisition Act and after a Reference is made to the Court, the person interested dies and his title devolves upon another person, because of inheritance, succession, insolvency, forfeiture, compulsory winding up or other form of statutory transfer, it would be open to the party upon whom the title has devolved to prosecute the claim which the person from whom the title has devolved could have prosecuted. In this case, there appears to be a statutory transfer from the second respondent in favour of the petitioners and this transfer in the form of occupancy rights which was visited on the petitioners only on 7.11.1988. It is also not in dispute that on 7.11.1988 the Reference is still pending before the Civil Court. Therefore, in accordance with the law laid down by the Supreme Court in : [1965]3SCR576 , the petitioners have a right to be impleaded in the proceedings.

6. According to the learned Counsel for the Petitioners, the Temple represented by the trustees has no right, whatsoever, over the lands sought to be acquired as on date and that consequent to the grant of the occupancy rights in favour of the petitioners and as persons who succeeded to prosecute the Reference before the Civil Court, they are the proper and necessary parties to the proceedings before the Civil Court.

7. However, this Court will not adjudicate on the merits of the matter as to whether the Temple or the petitioners would be ultimately entitled to the compensation, But this does not mean that the petitioners cannot be brought on record particularly in view of the law laid down by the Supreme Court in : [1965]3SCR576 . Therefore, the order passed by the Civil Court dismissing the impleading application I.A.No. 1 is set aside. The petitioners are directed to be impleaded as parties in Land Acquisition Case LAC No. 242/1986. All the contentions raised by the petitioners with regard to the petitioners being the only beneficiaries with respect to the compensation and for enhancement of the compensation will be decided by the Civil Court in accordance with law.

8. With these observations, this Civil Revision Petition is allowed. No order as to costs.

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