

**Smt. Usha Devi and ors. Vs. Bhu-arjan Adhikari, Indore and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Apr-02-1990

**Reported in :** AIR1990MP375

**Judge :** A.G. Qureshi and ;S.K. Dubey, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 18 and 30; [Constitution of India](#) - Article 226

**Appeal No. :** M.P. No. 596 of 1987

**Appellant :** Smt. Usha Devi and ors.

**Respondent :** Bhu-arjan Adhikari, Indore and ors.

**Advocate for Def. :** V.S. Kokje and Waghmare, Advs.

**Advocate for Pet/Ap. :** Mahajan and ;Degaonkar, Advs.

**Disposition :** Petition partly allowed

**Judgement :**

**A.G. Qureshi, J.**

1. The petitioners are the trustees of the Devi Ahilyabai Holkar Educational Trust, Manik Bag, Indore (hereinafter called the Trust). According to the petitioners the Lal Bag Palace (hereinafter called the Palace) is one of the properties vested in

the Trust. It comprises of an imposing palatial building, ancillary buildings, wells, trees and the land admeasuring 28.188 hectares on which it stands. It is within the municipal limits of Indore. Initially the palace belonged to the late Highness Maharaja Yeshwantrao Holkar, who was the Ruler of Indore. The Maharaja created a private trust in the name of his daughter Princess Usha Raje by a trust deed, known as Princess Usha Trust. However, at a later date Maha-rani Usha Devi and her children extinguished their entire interest in the vast properties of the Princess Usha Trust including the palace in question and transferred them to the petitioners Trust. As such according to the petitioners they are the legal owners of the palace as trustees of the public charitable trust.

2. The respondent No. 2 Shri Malhar Rao Holkar who is a remote relative of Maharaja Yeshwantrao and Smt. Usha Devi, filed a suit on 1-12-1973 in the Court of the learned District Judge, Indore claiming an undetermined and unquantified share in the property mentioned in the suit including the palace. The suit was registered as civil original suit No. 17 of 1973 and has now been renumbered as Civil Original Suit No. 39 of 1986. The petitioners have pointed out the defects in the said suit, but we are not at present concerned with the merits of that suit.

3. According to the petitioners, initially Maharaja Yeshwantrao Holkar was in exclusive possession of the palace as an owner and after the creation of the Trust the trustees of the Princess Usha Trust and thereafter the trustess of Devi Ahilyabai Holkar Educational Trust were in peaceful, continuous and undisturbed possession of the palace and the land on which it stands. Their names were entered in the revenue records as bhumi-swamis and in the Municipal records as owners. The petitioners and their predecessors have been spending considerable money on repairs, upkeep, watch and ward and maintenance of the palace. As such the petitioners and their predecessors have been in actual physical possession of the palace as the owners.

4. On 20-9-1982 the Revenue Department of the respondent No. 3, State of M.P. issued a notification under Section 4 of the Land Acquisition Act for acquisition of the palace and the land on which it stands, for the purpose of Scheme No. 93 of respondent No. 4, the Indore Development Authority. Thereafter a notification

under Section 6 of the said Act was issued, which was published in the M. P. Gazette dated 9-12-1983. The respondent No. 2 did not file any objection before the respondent No. 1, and did not raise any dispute as to the apportionment of the compensation payable under the Land Acquisition Act or any part thereof, or as to the persons to whom the same or any part thereof was payable as required under Section 30 of the Land Acquisition Act. It appears, that the respondent No. 2 wrote a letter to Hon'ble the Chief Minister of M.P. on the basis of news item in Naya Duniya dated 4-8-1982 contending that he has filed a Civil Suit against the petitioners and claimed title to the palace. The said letter is neither in terms of Section 30 of the Land Acquisition Act nor does it contain any claim to the apportionment of compensation or any part thereof or as to the person to whom the same or any part thereof is payable.

5. After the conclusion of the acquisition proceedings the Land Acquisition Officer on 12-3-87 made an award wherein he has quantified the market value and resultant compensation for the palace at Rs. 63,65,370/-. The petitioner being aggrieved by the quantification of the compensation have separately challenged the quantification by filing proceedings under Section 18 of the Land Acquisition Act. The petitioners have in this petition pointed out the defects in the award, but we are not called upon to adjudicate on the point of quantification of the compensation as the proceedings under Section 18 of the Land Acquisition Act are pending before the Competent Authority. However, while passing the award the Land Acquisition Officer made a direction that the respondent having filed the civil suit in the Civil Court and in their suit has raised an objection regarding the ownership a reference under Section 30 of the Land Acquisition Act would be necessary. In the consequence the amount of Award would not be paid to the petitioner, but would be deposited in the court to which a reference under Section 18 of the Land Acquisition Act shall be made, since a dispute has been raised by the respondent No. 2.

6. By this petition the petitioners challenge the reference under Section 30 of the Land Acquisition Act made by the Acquisition Officer on the ground that by making this reference the petitioners have been deprived of the use and interest on the amount of the award. The compensation amount shall remain lying in the Court for

a long time since the civil suit filed by the respondent No. 2 against the petitioner is pending before the District Judge Indore since 1973 and it is difficult to say as to when it will be finally decided. The second ground of challenge is that the Land Acquisition Court cannot decide the dispute as to apportionment of compensation or any part or as to the persons to whom the same is payable, since the prior suit involving such dispute is already pending in the court of the District Judge. In such dual proceedings, a conflicting decision cannot be ruled out. The petitioners are entitled to the possession of the compensation amount in lieu of possession of the property. If the respondents ultimately succeed in the civil suit which has been filed in the court of learned District Judge, they may recover the compensation from the petitioners, but the petitioners have the immediate right to be put into possession of the compensation amount. The petitioners are willing to keep corpus of the compensation amount intact until the disposal of the suit by keeping it in an investment which will avoid its erosion by capital gains tax and using only the interest which the petitioners are bound to exhaust on educational purposes under the Income-tax Act. This corpus will be available to the respondent No. 2 in the unlikely event of his success in the civil suit. The provisions of Section 30 of the Land Acquisition Act do not apply to the present case because a suit for title is already pending before a Competent Court. Therefore, the order of the Land Acquisition Officer making a reference under Section 30 of the Land Acquisition Act is without jurisdiction. Therefore, a prayer has been made that a writ of certiorari be issued to quash the direction in the award Annexure-J for making a reference under Section 30 of the Land Acquisition Act to the Land Acquisition Court and writ of mandamus be issued to compel the respondent No. 1 to pay the entire amount of compensation quantified by respondent No. 1 along with interest thereon to the petitioners.

7. The respondent No. 4 the Indore Development Authority has resisted the petitioner on the ground that the Civil Suit No. 17 of 1973 does not implead the answering respondent. However, in another suit No. 236/86A filed in the Court of Second Civil Judge, Class II, Indore the answering respondent the State of M.P. are parties and which challenge certain proceedings. The said suit is still pending in the Court. Similarly Gautam Ram son of respondent No. 2 has also filed M. P. No. 433 of 87 in the High Court in respect of the Lal Bag property, which is also

pending. The infirmities pointed out in the award have been denied by the respondent No. 4. It has also been stated that the I.D.A. has already deposited the full amount of compensation for the Lal Bag Palace and the surrounding land with the Land Acquisition Officer as per the award. Therefore, no relief can be granted against the respondent No. 4.

8. The respondents Nos. 1 and 3 have resisted the petition on the ground that although no objection was raised by the respondent No. 2 before the Land Acquisition Officer, but an objection as to apportionment of compensation was raised by the respondent No. 2 by letter addressed to the Hon'ble Chief Minister of M.P. which was received and filed in the Land Acquisition proceedings. The letter was since considered as a document which discloses the civil dispute regarding share in the property under acquisition as well. It was, therefore, incumbent upon the Land Acquisition Officer to refer the matter for apportionment of compensation under Section 30 of the Land Acquisition Act. As regards the challenge to the award pertaining to computation of the compensation it has been stated that since the petitioners have already applied for a reference under Section 18 of the Land Acquisition Act and an order has been passed for making such a reference, the reference court will be the competent court to decide the aforesaid issues. The petitioners cannot seek that relief from this Hon'ble court in this petition. The matter is yet to be decided by the competent court in accordance with law.

9. The respondent No. 2 has denied the allegations that the palace initially belonged to late His Highness Yeshwantrao Holkar and has also denied that the Maharaja has any legal right to create a private trust in favour of his daughter Princess Usha Raje in the properties including the Lal Bag palace. It is also denied that the petitioners have extinguished their entire interest in the vast properties of Princess Usha Trust. The Lal Bag palace never belonged to the petitioners nor to the trust created by them. It is also denied that they have become the legal owners. It has been admitted that a civil suit has been filed in the court of District Judge Indore. The pleas taken in the civil suit by the petitioners are absolutely irrelevant for the purpose of the petitioner. It is also denied that the plaint in the civil suit does not reasonably justify a claim of title to the entire property held by the Maharaja, but at the highest, can claim only an interest in the property.

According to the respondent No. 2 if the petitioners are spending any money for the upkeep and maintenance of the palace it does not become their property. It has also been denied that the petitioners and their predecessors were in actual physical possession of the property as owners is also denied. It has also been denied that Section 30 of Land Acquisition Act requires raising of any formal dispute by following a particular procedure. The information given by the respondent No. 2 about the existence of a civil suit and raising a dispute before the Chief Minister is sufficient and this letter was rightly held to be sufficient by the Land Acquisition Officer to hold that a dispute exists which should be referred for the decision of the Court. The Collector has been empowered to refer any dispute regarding the person to whom the compensation is payable for the decision of the Court in accordance with the provisions contained in Section 30 of the Land Acquisition Act. The right of the petitioners to be put in possession of the compensation amount has also been denied.

10. The learned counsel for the petitioner Shri Chitale has vehemently argued that as no dispute has been raised before the Land Acquisition Officer by respondent No. 2, the order of the learned Land Acquisition Officer making a reference under Section 30 of the Land Acquisition Act to the Competent Civil Court is without jurisdiction. When the petitioners were in possession of the palace and the land in question they were entitled to be put in possession of the compensation amount also. In not doing so the Land Acquisition Officer has committed a manifest illegality. The respondent No. 1 is bound to pay the compensation to the petitioners under Section 31(1) of the Land Acquisition Act. In support of his contention the learned counsel has placed reliance on an authority of the Privy Council and different High Courts with which we shall presently deal.

11. On the other hand the learned Deputy Government Advocate has placed reliance on a Supreme Court Authority and the judgments of the other High Courts in support of the order impugned. First of all let us consider the cases cited by the learned counsel.

12. In the case of *Manche Anege Akue v. Manche Kojo Ababio*, AIR 1927 PC 262 the Privy Council has held that where at the time of acquisition the land acquired is

found to be in the sole and exclusive possession of one, that one is prima facie entitled to the compensation money and any other person claiming the money must prove a better title in himself,

13. In the case of Basalingappa Gowda v. Nagamma, AIR 1969 Mysore 313 the Mysore High Court has held that when a person is not a party before, the Land Acquisition Officer, the Civil Court has no power to implead him as a party in a reference under Section 30 of the Land Acquisition Act. In such a reference the Civil Court has to decide the title only between those claimants as are mentioned in the reference.

14. In S. Duraiswami Nadar v. Addl. Special Deputy Collector, Railways, Nagarcoil, AIR 1978 Madras 313 it has been held that before making a reference to the civil Court under Section 30 of the Act it is necessary to find out whether there is a prima facie case made out for reference. The reference should not be made mechanically and if there may be no dispute pertaining to ownership or title, the question of apportionment of compensation and consequently of making a reference to Civil Court under Section 30 of the Land Acquisition Act does not arise at all.

15. The Gauhati High Court in the case of Phongseh Misao v. Collector of Land Acquisition, AIR 1977 Gauhati 47 has held that S. 30 of the Land Acquisition Act presupposes any one of the two kinds of disputes mentioned therein, namely (1) any dispute as to apportionment of the compensation awarded or any part thereof; and (2) any disputes as to the persons to whom the same or any part thereof is payable. The word dispute occurring in Section 30 means a quarrel between two or more rival parties laying claim over the whole or any part of the compensation money. The use of the word persons in plural number in the section is also significant. A dispute presupposes the rival claims of two or more contending parties which are to be decided by the District Judge. A mere doubt about the eligibility to receive compensation money in the absence of any other contending party laying claim to the whole or any part of the compensation money, will not constitute a dispute within the meaning of Section 30 and in such a case the Collector has no jurisdiction to refer the matter to the District Court.

16. In it has been held that in a reference under Section 30 the District Court cannot implead persons who claim to be entitled to compensation as parties when the same persons were not parties before the Collector. If a person who was not a party before the Collector is allowed to be impleaded by the District Court in a reference to it, the nature of dispute will be substantially changed, for a new dispute incorporating the claim of such a person will be raised. Since the jurisdiction of the District Court in a reference under Section 30 of the Land Acquisition Act is restricted to the precise terms of reference, such impleading will amount to an enlargement of the terms of the reference and as such the District Court will be acting without jurisdiction or in excess of jurisdiction. For such a person the doors of a civil court are always open and he can approach the civil Court with a suit to get this right duly determined.

17. In the case of *Sudhansu Kumar Ghose v. Land Acquisition Officer, Patna*, AIR 1961 Patna 150 it has been held that unless a dispute exists in respect of the apportionment of compensation the Land Acquisition Officer has no authority or jurisdiction to make a reference to the Civil Court under Section 30 of the Land Acquisition Act.

18. The Supreme Court has considered the scope and powers of the Land Acquisition Officer for making a reference under Section 30 of the Land Acquisition Act in the case of *Dr. G. H. Grant v. State of Bihar*, AIR 1966 SC 237 wherein it has been held that the two provisions i.e. Section 18(1) and Section 30 of the Land Acquisition Act invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. The collector is enjoined under Section 18(1) of the Act to refer a dispute relating to apportionment, or title to receive compensation, on the application within the time prescribed by sub-section (2) of Section 18 of a person interested who has not accepted the award. The Collector under Section 30 of the Act is authorised to refer to the Court after compensation is settled under Section 11, any dispute relating to apportionment of the compensation or any part thereof or relating to the persons to whom the same or any part thereof is payable. A person who is shown in that part of the award which relates to apportionment of the compensation and who is present either personally or through a representative or on whom a notice

is served under Sub-section (2) of Section 12, if he does not accept the award, must apply to the Collector within a time prescribed under Sub-section (2) of Section 18 to refer the matter to the court. But a person who has not appeared in the acquisition proceedings before the Collector, if he is not served with a notice of the filing, may raise a dispute relating to apportionment or to the persons to whom it is payable, and apply to the court for a reference under Section 30 for determination of his right to compensation which may have existed before the award of which may have devolved upon him since the award. As such although an application under Section 18 has to be made within the prescribed time, but an application can be made under Section 30 at any time as no time limit is prescribed for making such an application. Whereas the Collector is under an obligation to make a reference if an application is under Section 18, he has a discretion in an application under Section 30 of the Land Acquisition Act and is not enjoined to make a reference, he may in his discretion relegate the person raising the dispute to agitate the same in a suit and pay the compensation in the manner declared by his award.

19. It has further been held by the Supreme Court that actually the award is not the source of right to compensation. The award made by the Land Acquisition Officer is mere quantification of the appropriate Government's offer and which is made because the Govt. has taken over or intends to take the land of the owner under the authority given by the Act. As such the Collector is not authorised to finally decide the conflicting right of the persons interested in the amount of compensation; his primary concern is with the acquisition of the land. It is true that while determining the amount of compensation which may be offered, he has to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or whose claims, he had information, whether they have appeared before him or not. But the apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation. His award is conclusive only between the Collector and the persons interested and not among the persons interested inter se. The Collector has no power to adjudicate finally upon the title to compensation, that dispute has to be decided either in a reference under Section 30 or in a separate suit. When a payment is made of the compensation under Section 31 to the person declared by

the award to be entitled there to it discharges the State of its liability to pay compensation, leaving it open to the claimant to agitate his right either in a reference under Section 30 or by a separate suit.

20. In the light of the aforesaid authorities the first point which has to be considered and decided is whether the Collector has acted illegally in making a reference to the District Court without there being a dispute pertaining to the entitlement of compensation or apportionment of the compensation before him. It is not disputed before us that a civil suit is pending in a competent Civil Court in respect of the property in question wherein the respondent No. 2 has put forward his claim in respect of the properties belonging to the Trust including the property in question. This fact was also brought to the notice of the Land Acquisition Officer, although not by a proper application to the Land Acquisition Officer, but through a letter to the Chief Minister. As such it cannot be disputed that it was within the knowledge of the Land Acquisition Officer that a civil suit is pending in respect of the property in question before a competent civil court. In view of the aforesaid could the Land Acquisition Officer ignore the aforesaid fact i.e. of the pendency of the civil suit and pass an award in favour of the petitioners without referring the matter to the Competent Civil Court?

21. It is, no doubt, true that the Land Acquisition Officer had a discretion in the matter and either he could take cognizance of that fact of the existence of a dispute or could have asked the objector the respondent No. 2 to get his right adjudicated through a civil Court. But the Collector opted to refer the matter to the competent civil court. In our opinion, in view of the judgment of the Supreme Court in *Dr. G. H. Grant v. State of Bihar*, (AIR 1966 SC 237) (supra) the Collector can take notice of the fact of the pendency of the civil suit, and for bringing that fact to the notice of the Land Acquisition Officer neither a formal application is necessary nor a limitation is prescribed. In the aforesaid case it was argued before the Supreme Court that under Section 31 of the Land Acquisition Act the Collector is bound to tender payment of compensation awarded by him to the persons entitled thereto according to the award. Therefore, the only persons who can raise a dispute under Section 30 are those whose names are set out in the award. The Supreme Court repelling the aforesaid contention held that in accordance with

Section 30 the Collector is not authorised to decide finally the conflicting rights of the persons interested in the amount of compensation; his primary concern is with the acquisition of the land. In determining the amount of compensation which may be offered, he has, it is true, to apportion the amount of compensation between 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 appeared before him. If the Collector has information about the existence of a dispute in respect of the entitlement to the compensation or if it is brought to his knowledge that other persons are also interested in the land, even though such persons do not appear before him, in such a case although the Collector is authorised to apportionment the amount of compensation between the claimants, but the order of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation and it does not become conclusive between the claimants inter se. As such the Collector has no power to finally adjudicate upon the entitlement to the compensation. The dispute has to be decided by a reference under Section 18, under Section 30 or by way of a separate suit. As such, when this fact was brought to the notice of the Land Acquisition Officer that a civil suit is pending in respect of the property in question wherein the respondent No. 2 has put his claim in the property, the Collector could not ignore that claim and hold that the petitioner alone is entitled to compensation despite the pendency of the suit in a Civil Court. The only course open to the Collector was to refer the matter to the competent court. In view of the aforesaid we are unable to agree with the contention of the learned counsel for the petitioner that there being no dispute in existence before the Land Acquisition Officer he had no jurisdiction to make a reference under Section 30 of the Act.

22. This leads us to another question i.e. the right of the petitioner to get the compensation during the pendency of the reference/ civil suit. The Privy Council in the case of *Manche Anege Akue v. Manche Kojo Ababio*, (AIR 1927 PC 262) (supra) has held that the person who was in the sole and exclusive possession of the property at the time of its acquisition is the one, who is prima facie entitled to the compensation money and the other person claiming the money must have a better title in himself. The dispute pertaining to title is pending before the competent Civil Court and a reference has also been made to the District Court by

the Land Acquisition Officer. Therefore, we refrain to make any observation in that behalf. However, this fact cannot be lost sight of that the final adjudication of the respective claims of the parties is likely to take sufficiently long time. The petitioner, which is a charitable trust, has been deprived of the possession of the property in question, which the trust was enjoying exclusively at the time of the acquisition and consequently, the beneficiaries of the Trust are also deprived of the benefits of the income from that property. In paragraph 18 of the petition, it has been averred by the petitioners that if the compensation amount is given to them they are prepared to keep the same in tact so that the corpus will be available to respondent No. 2 in the event of its success in the civil suit. After the case was closed for orders the petitioners have filed a declaration and an undertaking on 13-3-1989. As the declaration and undertaking was filed after the close of the arguments the case was reopened. Thereafter on 19-4-1989 we ordered to hear the other parties in respect of the declaration filed by the petitioners. The case was accordingly listed on 26-4-89 and after adjournments finally no reply was filed by the respondent No. 2 or any other respondents, although time was sought by respondent No. 2 to file reply to the aforesaid declaration on 4-5-1989. But till 24-6-1989 when the case was finally heard no reply was filed.

23. The declaration and undertaking given by the petitioners are without prejudice to their objection which they have raised before this court pertaining to the jurisdiction of the Land Acquisition Officer in making a reference under Section 30 of the Land Acquisition Act and depositing the amount in the court. According to the declaration, the civil suit pending before the District Court is likely to take a long time for its disposal. The petitioners being Trustees of a public charitable trust, the income i.e. the capital gains arising out of the acquisition is actually spent on the charitable objects of the trust and if the entire compensation amount is not invested in the exempted securities specified under the Income-tax Act such as 'Capital gains units' of the 'Unit Trust of India', the compensation amount will attract income tax liability at a flat rate of 52.5 per cent. In order that the income-tax liability is saved and the interest received can be unutilised on the objects of the trust and the corpus may remain in tact, the petitioners declare and undertake that they would, in the event of the petition being allowed, invest the amount in the 'capital gains units' of the 'Unit Trust of India' and until the suit pending in District

Court is decided, they shall not appropriate the principal funds so invested. The income and expenditure of the petitioners as a public charitable trust is subject to audit, and is subject to the general watch-dog jurisdiction of the Registrar of the Public Trusts and the Income-tax Authorities. There is, therefore, no question of the corpus of the income of the compensation amount being siphoned out by the petitioners for private purposes. In fact the entire immovable property held by the Maharaja Yeshwantrao Holkar was transferred by him to a private trust for the benefit of the petitioner No. 1 and her progeny. But the entire property was transferred by them for educational purpose voluntarily. It cannot even, be imagined that they would act dishonourably. It has also been stated that the petitioners have been following the same procedure in the pending civil suit also. An order has been passed to this effect by the learned District Judge in a similar situation, with the consent of respondent No. 2.

24. In view of the aforesaid declaration and undertaking by the petitioners and in view of the fact that the compensation amount is lying in the court with the possibility of attracting Income-tax liability at the rate of 52.5 %, it is in the interest of all concerned that the amount may be allowed to be invested as per the scheme proposed by the petitioners to which no reply has been filed opposing the scheme by any of the parties, it is directed that the petitioner Trust shall be entitled to deposit the total amount of the compensation deposited in the court along with the interest on the compensation amount in the name of the petitioner-Trust in the exempted securities i.e. 'capital gains unit' of the 'Unit Trust of India' and as a result of the investment the dividends shall be utilised for charitable purposes in accordance with the purposes of the Trust. If the suit/reference remains pending even after the expiry of deposit term of the 'Capital Gains Units' of the 'Unit Trust of India' the amount so invested shall be put in a fixed deposit with any Nationalised Bank with the concurrence of the court concerned. The petitioners shall keep a separate account of the dividends, which the petitioners-Trust may receive as dividends and which it may use for charitable purposes. The accounts so maintained shall be filed in the court as and when the court may direct the petitioners to do so. The petitioners shall file an undertaking before the Competent Court to which the reference has been made and where the amount is deposited to the effect that the income from the dividends which may be earned as a result of

the investment in the aforementioned scheme of the Unit Trust of India shall be utilised fully for charitable purposes for which the trust is created and thereafter the amount is kept in fixed deposit as per the directions of the Court as mentioned above. The interest on the fixed deposit amount shall also be utilised for the purpose of the Trust.

25. In the result it is directed that the petitioners shall give an undertaking before the Court where the amount is deposited and after the receipt of the undertaking the court shall allow the petitioners to withdraw the compensation amount with interest deposited with the court in lieu of the acquisition of the property in question for being invested in the scheme of the 'Unit Trust of India' in accordance with the aforementioned directions of this court in the name of the petitioners. The petition is partly allowed to the extent mentioned above. The panics shall bear their own costs as incurred security cost.

If deposited by the petitioners, shall be returned to them after verification.

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