

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**APPEAL SUIT No.2819 of 1996**

**JUDGMENT:**

Claimant Nos.3 and 4 in Original Petition No.49 of 1986 on the file of the Principal Subordinate Judge, Vijayawada preferred the present appeal challenging the order and decretal order dated 29.3.1996 with regard to apportionment of compensation in the Reference under Section 30(2) of the Land Acquisition Act, 1894 (for short, "the Act"). During pendency of the appeal, as claimant No.3 died, his legal heirs came on record as appellant Nos.5 and 6 vide order dated 8.12.2008 in A.S.M.P.No.2613 of 2008.

2. The appellants are the legal heirs of claimant Nos.1 and 2 whose land was acquired under the Act to an extent of Ac.5.26 cents in R.S.No.34/2 of Payakapuram Village for rehabilitation of canal berm encroachers of Vijayawada Town. The claimants made rival claims before the Land Acquisition Officer (L.A.O.) and due to rival claim to receive compensation between claimant Nos.1 and 2, the L.A.O. referred the matter under Section 30(2) of the Act to the Civil Court while depositing Rs.1,17,743.85 ps. payable under the Award.

3. Claimant Nos.3 to 5 filed their claim statement alleging that the notification is vitiated by illegality and is not according to the law and rules. The compensation was fixed at Rs.11,000/- per acre by the Referring Officer and deposited Rs.1,17,743.85 ps. It is too low. In 1983 itself, the price of the land was Rs.1,18,000/- per acre and it raised to Rs.3,00,000/- per acre and the same was represented to the L.A.O. during Award Enquiry, but the L.A.O. did not consider the same.

4. Claimant No.6 filed claim statement contending that it is a

registered society with an object to provide house site plots and houses to the members of the society, and purchased land on 18.8.1985 to an extent of Ac.5.26 cents in R.S.No.34/2 of Payakapuram Village. The said land was acquired. In the present land acquisition proceedings, an amount of Rs.1,17,743.85 ps was deposited in favour of claimant Nos.1 to 5. Claimant No.6 is a society having no knowledge about the acquisition and they entered into an agreement on 18.8.1985 by paying Rs.1,77,500/-. Therefore, they are entitled to receive the entire compensation. Claimant No.6 filed W.P.No.11923 of 1985 before this Court to quash the acquisition proceedings. It is also contented that claimant No.6 paid Rs.4,681.40 ps. to the Special Officer, Gram Panchayat, Payakapuram towards betterment charges for approving the lay out, but the society was not impleaded as a party to the proceedings. Claimant No.6 was added at its request and a joint memo was filed by claimant Nos.1 to 6. In the said joint memo, claimant No.6 limited the claim only to Rs.89,000/-.

5. Claimant No.7 filed an application I.A.No.1313 of 1986 and came on record vide order, dated 6.9.1991, claiming that she is the owner of Ac.1.26 cents out of the acquired land and the claimant acquired title to the said land, which was originally covered by R.S.No.34/1, but erroneously, shown as R.S.No.34/2 by the L.A.O.

6. Claimant No.7 filed a memorandum of objections contending that she is the owner of an extent of Ac.1.26 cents out of the land acquired by the Referring Officer covered by Award No.1/86 in item No.9 at page No.15 of the Award. She specifically contended that she acquired title to this land in S.No.34/1 under registered document bearing No.3851/57 registered with Sub Registrar, Vijayawada and since then, she is in continuous possession and enjoyment of the same. Thus, she is the original owner of an extent of Ac.1.26 cents and entitled to claim compensation payable for the said land. She

further contended that originally, a patta was issued to her predecessor-in-title – Nukala Seshaiyah, S/o.Veera Raghavaiah. The claimant also sent a representation to the L.A.O. at the time of passing Award, but her claim was not considered. Therefore, she is entitled to claim compensation payable for an extent of Ac.1.26 cents covered by the Reference under Section 30(2) of the Act.

7. During the course of enquiry, on behalf of the claimants, P.Ws.1 to 4 were examined and marked Exs.A-1 to A-16. On behalf of the Referring Officer, none were examined and no documents were marked.

8. Upon hearing argument of both the counsel and considering oral and documentary evidence on record, the trial Court awarded compensation for an extent of Ac.1.26 cents in favour of claimant No.7 and the balance of the compensation to claimant No.6.

9. Aggrieved by the order and decretal order in O.P.No.49 of 1986, dated 29.3.1996, claimant Nos.3 and 4 preferred the present appeal raising several contentions mainly contending that claimant No.7 is not entitled to claim compensation in a Reference for apportionment of compensation among claimant Nos.1 and 2 initially and that too, the land acquired by the Government is situated at R.S.No.34/2 of Payakapuram Village, not in S.No.34/1, but the trial Court committed an error in apportioning compensation in favour of claimant No.7 for an extent of Ac.1.26 cents, erroneously.

10. Finally, he contended that claimant No.7 is not entitled to any amount of compensation since the Reference is only to apportion the compensation between claimant Nos.1 and 2.

11. During hearing of this appeal, Sri V.S.R.Anjaneyulu, learned counsel for the appellants, would contend that the scope of enquiry

under Section 30(2) of the Act is limited and the Court is supposed to decide the rival claims to the Reference and a third party is not entitled to come on record by filing a petition under Order I Rule 10 C.P.C. and the trial Court committed a fundamental mistake in permitting claimant No.7 to come on record and at best, her remedy is to file a separate suit for appropriate relief. In support of his contention, he placed reliance on the judgment of the Apex Court reported in **Ram Prakash Agarwal and another v. Gopi Krishan (Dead through L.Rs.) and others**<sup>[1]</sup>, **Repaka Bhyravamurthy and another etc. v. Muppidi Venkataraju and others etc.**,<sup>[2]</sup> and **G.Venkata Reddy v. K.Krishna Rao and another**<sup>[3]</sup>.

12. Learned counsel for the appellants further contended that claimant No.7 did not prove her claim by producing satisfactory evidence, which entitles to claim share of compensation for an extent of Ac.1.26 cents, and finally, prayed to set aside the order and decretal order passed by the Principal Senior Civil Judge, Vijayawada in O.P.No.49 of 1986.

13. *Per contra*, Sri V. Subrahmanyam, learned counsel for respondent No.1, contended that this Court has no pecuniary jurisdiction to entertain the appeal since the value of the appeal is Rs.28,743.85 ps. and the District Judge alone is competent to entertain the appeal and decide the same in view of the judgments reported in **Motte Rajaram v. Revenue Divisional Officer, Adilabad and another**<sup>[4]</sup>, **Chikkanna Chettiar v. V.S.Perumal Chettiar and another**<sup>[5]</sup> and **Deputy Director of Agriculture, Khammam and another v. Sarvadevabhatla Ramanadham and others**<sup>[6]</sup>.

14. Considering rival contentions and upon perusing the material available on record, including the order and decretal order under

challenge, the points that arise for consideration are:

1. ***“Whether this Court is competent to decide the appeal against a Reference under Section 30(2) of the Land Acquisition Act for an amount of Rs.28,743.85 ps? and***
2. ***Whether claimant No.7 can come on record by filing a petition under Order I Rule 10 C.P.C., if not, whether the trial Court is right in apportioning compensation to claimant No.7 while deciding a Reference under Section 30(2) of the Act?”***

15. **POINT No.1:-** The first and foremost contention raised by the learned counsel for respondent No.1 is that this Court is not competent to decide the appeal, as the appeal lies to the District Court against the order and decretal order for Rs.28,743.85 ps., as per the A.P. Civil Courts Act, 1972. No doubt, the date of Reference is decisive to determine the pecuniary jurisdiction of the Civil Court, even to entertain an appeal. By the date of Reference under Section 30(2) of the Act, the District Court alone is competent to entertain an appeal against the order and decretal order for Rs.28,743.85 ps., but the appeal is filed before this Court challenging the decree and decretal order passed by the trial Court in Reference under Section 30(2) of the Act.

16. Sri V.S.R.Anjaneyulu, learned counsel for the appellants, while contending that this Court can exercise power under Section 24 C.P.C. and dispose of the appeal, as it is a higher Court than the District Court, and placed reliance on a Larger Bench decision of this Court reported in **Vallabhaneni Lakshmana Swamy and another v. Valluru Basavaiah and others**<sup>[7]</sup>.

17. Admittedly, according to Section 54 of the Act, the appeals under the Land Acquisition Act are governed by the provisions of the Code of

Civil Procedure. In such a case, when the value of the appeal is less than Rs.29,000/-, the appeal shall be filed before a District Judge, who is competent to entertain the appeal, in view of the amendment to the A.P. Civil Courts Act.

18. Learned counsel for respondent No.1, in support of his contention, placed reliance on a judgment of this Court reported in **Motte Rajaram's** case (4 supra). While deciding a similar question, the Division Bench of this Court held in para Nos.25, 26, 27, 28 and 29 as follows:

*"25. Sub-section (2) of [Section 26](#) of the Act makes it clear that every award shall be deemed to be a decree and judgment within the meaning of [Section 2](#), Clause (2) and [Section 2](#), Clause (9) respectively, of the Code of Civil Procedure.*

*26. Even though conspicuously, under [Section 30](#) of the Act, the expression 'award' was not employed, but specifically postulated under Sub-section (2) of [Section 26](#) of the Act that an 'award' shall be deemed to be a decree and judgment. Therefore, when an award was passed under Part III of the Act, the same itself is to be treated as a decree and judgment. A decision rendered in a dispute between the parties inter se, shall, all the more, with more liberality has to be treated as a decree and judgment.*

*27. Hence, in fact, there is discernible difference on this aspect, between [Section 18](#) and [Section 30](#) of the Act. The only distinction, which is already pointed out is, the former, deals with a dispute regarding the quantum of compensation, and the latter deals with the inter se disputes.*

*28. The most significant factor to be noticed is [Section 54](#) of the Act does not deal with a decision rendered under [Section 30](#) of the Act, whereas [Section 18](#) of the Act deals with an award, which again, as already pointed out, has to be treated as a decree and judgment. Hence, virtually, there is a vacuum between a decision rendered under [Section 30](#) of the Act and the procedure to be adopted later under [Section 54](#) of the Act. But, the only link is [Section 53](#) of the Act.*

*29. [Section 53](#) of the Act specifically states about the application of the provisions of C.P.C., and consequently, any decision rendered by the competent Court exercising jurisdiction under [Section 30](#) of the Act has to be necessarily dealt with or guided by the procedure*

*prescribed under the Code of Civil Procedure or otherwise any decision rendered by the competent Civil Court after reference to it under [Section 30](#) of the Act would virtually become inexecutable or ineffective.”*

Finally, in the above judgment, the Division Bench of this Court is of the view that an appeal would lie to the competent Court subject to pecuniary jurisdiction. The same view was expressed by Madras High Court in the judgment reported in **Chikkanna Chettiar v. V.S.Perumal Chettiar and another**<sup>[8]</sup> wherein it is held as follows:

*“The Subordinate Judge who is appointed under S.3(d) of the Act to decide a dispute with regard to the allocation of compensation money does not constitute a Court of record, but admittedly he does constitute a Civil Court. Hence an appeal lies from the decision of a Subordinate Judge appointed by the Provincial Government under Section 3(d) to decide a dispute referred by the Collector under S.30 of the Act.”*

19. Similarly, in the judgment reported in **Deputy Director of Agriculture, Khammam's** case (6 supra), it is held that the appeal shall lie subject to the pecuniary jurisdiction to the Court competent to entertain the same.

20. In view of the principles laid down in all the three judgments, the appeal would lie to the Court, which is competent to entertain as per the A.P. Civil Courts Act as amended from time to time. Since the value of the appeal is Rs.28,743.85 ps., the District Judge alone was competent by the date of Reference under Section 30(2) of the Act and there is no quarrel about it. However, this appeal is pending since 1996. Almost, 19 years have been elapsed from the date of filing the appeal. In similar circumstances, the Larger Bench of this Court, in **Vallabhaneni Lakshmana Swamy's case (7 supra)**, laid down certain guidelines in para No.73 of the judgment, which reads as under:

*“73. Therefore, we reached the following conclusions :*

*1. That the Civil Court (Amendment) Act 30 of 1989 is applicable prospectively from 1.12.1989.*

- 2. Even in case of suits which were filed earlier to the amendment and they are pending disposal as on the date of the amendment came into force, the appeal if any has to be necessarily filed before the Forum created under the amended Act depending on the pecuniary limits. To this limited extent, the decision in Kotina Papaiah's case (supra) and Kameshwaramma 's case (supra) and Haragopal's case (supra) stand modified.*
- 3. Any appeal having been presented before date of amended Act coming into force and the appeals pending as on the said date are required to be disposed of by the Courts, wherever they were pending and the amendment will not have any effect on pending appeals either presented or pending.*
- 4. The suits or petitions in which decrees were passed prior to 1.12.1989, they will be dealt with in accordance with the pre-amended procedure.*
- 5. In the cases before us, even after the amendment came into force on 1.12.1989, number of appeals having value less than Rs. one/3 lakhs were admitted by this Court and some of them were disposed of by virtue of the judgment of the Division Bench in Kameshwaramma's case (supra) subsequent cases though in fact they do not fall within the category of either pending appeals or appeals presented, before the amendment. The pecuniary limits and forum go together and the amendment being prospective in operation, the appeals ought to have been filed before the amended forum. But, taking into consideration that large number of appeals were already admitted by this Court, and they are pending for a considerable length of time and keeping in view the maxim that "Actus curiae neminem gravabit" (An act of the Court shall prejudice no man), we declare that such of the cases which were filed subsequent to amendment are deemed to have been transferred to this Court under Section 24 of Code of Civil Procedure for their disposal in accordance with law."*

In the facts of the above judgment, similar question came out about maintainability of the appeals less than the pecuniary limits, but this Larger Bench, instead of ordering return of the appeal, directed the Registry to list the matters before appropriate Bench by exercising power under Section 24 of C.P.C. If the principle laid down by Larger Bench is applied to the facts of the present case, there is no bar to decide the present appeal by this Court though appeal can be entertainable by District Judge under Section 30(2) of the Act. Hence, by following the ratio laid down in the Larger Bench judgment, I am of the view that this Court is competent to decide the appeal.

21. Undoubtedly, on account of entertaining the appeal by this

Court, the parties may lose a chance of filing an appeal before this Court again and if it is decided by District Judge, an appeal can be maintained before this Court, but that is not the ground to direct the Registry to return the appeal at this stage almost after lapse of 19 years. Hence, by following the judgment of the Larger Bench, I am of the view that this Court can decide the appeal, being the Court of record. Accordingly, point No.1 is answered in favour of the appellants and against the respondents.

22. **POINT No.2:-** The major contention of the learned counsel for the appellants is that a Reference under Section 30(2) of the Act is limited and a third party cannot be allowed to come on record by filing an application under Order I Rule 10 C.P.C. since the Reference was made to decide the dispute between claimant No.1 and claimant No.2 regarding apportionment and drawn the attention of this Court to a decision reported in **Ram Prakash Agarwal's case (1 supra)**. The Apex Court, relying on earlier judgments of the Apex Court, held at the end of para No.19 and in para No.20 as follows:

*"19. .... It is evident from the above, that a person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the Act, 1894, cannot get himself impleaded directly before the Reference Court."*

*20. In view of the above, the legal issues involved herein, can be summarised as under:-*

- (i) An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings;*
- (ii) Inherent powers under Section 151 CPC can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under the CPC;*
- (iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;*
- (iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit.*

- (v) *A person aggrieved may maintain an application before the Land Acquisition Collector for reference under [Section 18](#) or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court.*

23. Finally, the Apex court concluded that the respondents are at liberty to seek appropriate remedy by resorting to appropriate proceedings, as permissible in law. The same question came up before this Court in another judgment of this Court reported in **G.Venkata Reddy's case** (3 supra). This Court, while deciding an appeal against the Reference under Section 30(2) of the Act, held as follows:

*"If the Land Acquisition Officer is of the opinion that the dispute as to title (apportionment) arising before him involves complicated questions of fact and/or law and that, it is desirable that those questions should be enquired into by a Civil Court, he can refuse to decide that question and refer the same for decision to Civil Court. In such a case, he has to act under Section 30. It is obvious that when he refers the dispute as to apportionment to Civil Court, he will also send the amount of compensation, determined by him, to the Civil Court."*

24. In **Repaka Bhyravamurthy's case** (2 supra), Larger Bench of this Court held as follows:

*"A person may not be entitled to be impleaded as a party only for the purpose of enhancement of compensation, but if any other question arises which touches the issue of his entitlement or apportionment to the amount of compensation, the same may be considered by reason of an application under Order I Rule 10, C.P.C.*

*The power of reference under [Section 30](#) is wider than the power of reference under [Section 18](#). Can it in this situation be said that a person who did not appear before the Land Acquisition Officer has no locus standi to get himself impleaded as a party? The answer to the same must be rendered having regard to the facts and circumstances of each case. A person may not appear either having not been issued any notice or otherwise before the Collector and still his interest may be protected by the Collector and an award can be passed in his favour. However, an enquiry made by the Collector under [Section 11](#) of the Act cannot be held to have such a repercussion with those who had not been found to be interested in the claims as they would not have say at all. However, a subsequent discovery or question of interest as regard the entitlement to receive the compensation or a part of it by reason of a subsequent event, may give rise to a situation where an application under Order 1 Rule 10 CPC may be*

*maintainable. The devolution of such interest may not be confined to the situation contained in Section 146 of the Code of Civil Procedure, more so, when a question of title is involved.*

*In a reference under [Section 30](#), not only the question of title, but also the status of the parties may be involved. Order 1, Rule 10 confers a wide power upon the Court. A party may be added by the Court if he satisfies the provisions specified therein or the Court may, at any stage of the proceedings, suo motu add a party or may strike off the name of a party in the interest of justice. Although normally a plaintiff has more say in the matter of impleadment of parties, an order of impleadment by a Court of law, in relation to a question where the status of the persons is involved, a person may have a right to be impleaded.*

*Moreover, in a given case, a person may not even know that the lands are going to be acquired and thus, he will not be in a position to appear before the Land Acquisition Collector. Even a notice might not have been served upon him. It would be harsh if a person who had been kept in dark or who has been a victim of some fraudulent act, is not impleaded as a party. In such a situation, interest of justice demands that he should be impleaded as a party.”*

25. By applying the principles laid down in the above two judgments, the scope of enquiry under Section 30(2) of the Act is limited and the Court is under an obligation to decide the dispute between rival claimants and a third party cannot come on record by invoking Order I Rule 10 C.P.C. to claim whole or part of the compensation to be apportioned among the claimants to the Reference. Therefore, impleading claimant No.7 under Order I Rule 10 C.P.C. by order dated 6.9.1991 in I.A.No.1313 of 1986 itself is a fundamental mistake committed by the trial Court. Undoubtedly, the order in I.A.No.1313 of 1986 dated 6.9.1991 was not challenged by filing a Revision before this Court, but that will not debar the appellants to challenge the same in a collateral proceedings in the appeal. Therefore, in view of the principles laid down in the above judgments of the Apex Court Full Bench and the Division Bench of this court, I am of the considered view that the trial Court committed an error in apportioning compensation for an extent of Ac.1.26 cents to claimant No.7. Therefore, the apportionment order of the trial Court is hereby set aside. However, claimant No.7 is given liberty to establish her right

to claim share in the compensation in an appropriate legal proceedings subject to permissibility under law. Accordingly, point No.2 is held in favour of the appellants and against claimant No.7.

26. In view of my findings on Point Nos.1 and 2, the Appeal Suit is allowed setting aside the order and decretal order, dated 29.3.1996, passed in O.P.No.49 of 1986 on the file of the Principal Subordinate Judge, Vijayawada. There shall be no order as to costs.

27. Miscellaneous Petitions pending, if any, in this Appeal Suit shall stand closed.

**JUSTICE M.SATYANARAYANA MURTHY**

Date: 17.8.2015  
AMD

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**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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**APPEAL SUIT No.2819 of 1996**

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**DATE: 17.8.2015**

AMD

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[\[1\]](#) 2013(3) SCJ 811  
[\[2\]](#) A.I.R.2002 Andhra Pradesh 77 (Full Bench)  
[\[3\]](#) 1982 (1) ALT 166  
[\[4\]](#) 2006 (3) ALD 199 (DB)  
[\[5\]](#) A.I.R.1940 Madras 474 Full Bench  
[\[6\]](#) 1978 (1) The Andhra Weekly Reporter 550  
[\[7\]](#) 2004 (5) ALD 807 (LB)  
[\[8\]](#) A.I.R.1940 Madras 474 Full Bench