

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

C.R.P.No.3612 of 2016

ORDER:-

The petitioner herein is the third party in L.A.O.P.No.41 of 2006 on the file of the Senior Civil Judge, Sompeta, which is a reference made by the Land Acquisition Officer-cum-Revenue Divisional Officer, Tekkali, Srikakulam District, under Section 18 of the Land Acquisition Act (hereinafter referred to as 'the Act'). The petitioner filed I.A.No.19 of 2016 under Order I Rule 10 C.P.C., to implead her as the sixth claimant in the reference. Vide Orders, dated 25-04-2016, the learned Senior Civil Judge, Sompeta dismissed the application. Hence, the revision.

The contention of the petitioner is that she purchased Ac.0-20 cents of land in Sy.No.221/2 from Kirti Chandra Dev under registered sale deed No.595/1984, dated 26.03.1984. The sale deed was executed by one Balla Gavarayya who was a registered GPA holder of the said Kirti Chandra Dev under registered G.P.A.No.1905/1984, dated 20.02.1984. The second and third respondents herein, who are claimants 1 and 2 in the Land Acquisition O.P., are the daughters of the said Kirti Chandra Dev. The Land Acquisition Officer has acquired an extent of Ac.2-01 cents in Sy.No.221/2 for construction of Mini Tourism Park at Rattakanna village of Ichapuram Municipality limits. The acquired lands include an extent of Ac.1-67 ½ cents which is said to have been acquired from the third respondent herein/the second claimant in the Land Acquisition O.P. Even though Ac.0-20 cents of land belonging to the third party-petitioner was part of the acquired lands, the Land Acquisition Officer failed to recognize her and therefore no compensation was paid to her and she is not made a party to the reference under Section 18 of the Act. When she approached the authorities, they informed her that since the land of the

petitioner admeasuring Ac.0-20 cents was not part of the acquired lands, she is not entitled to any compensation. After exhausting all her remedies with the authorities, the third party-petitioner filed W.P.No.24199 of 2006 for Writ of Mandamus declaring the action of the Land Acquisition Officer not referring the matter of acquiring the land of the petitioner. During the course of hearing of the writ petition, this Court called for a report from the Senior Civil Judge, Sompeta, to inform as to whether there is any reference pending under Section 18 of the Act in respect of Sy.No.221/2 of Rattakanna village, Ichapuram Mandal. The Senior Civil Judge, Sompeta, informed the High Court that L.A.O.P.No.41 of 2006 is pending on its file with regard to the acquisition of the land in respect of Sy.No.221/2. After taking into consideration the report of the learned Senior Civil Judge, this Court has disposed of the writ petitioner on 09.03.2015 directing as under:-

“Having regard to the above, this Court is of the view that the grievance of the petitioner that the award concerned is not referred to the civil Court under Section 18 of the Act does not survive. However, the learned counsel for the petitioner submitted that for the same survey number, a reference was made in connection with inadequate compensation, but whereas he is challenging the same on some other ground. If it is the grievance of the petitioner, she is at liberty to implead herself before the court concerned to ventilate her grievance.”

In view of the specific direction of the Writ Court giving liberty to the third party-petitioner to file an application to implead her before the Land Acquisition Court to ventilate her grievance, the third party-petitioner filed I.A.No.19 of 2016 under Order I Rule 10 C.P.C., which came to be dismissed.

A perusal of the impugned Order shows that the learned Senior Civil Judge has grossly erred in dismissing the request of the third party-petitioner by relying upon other decisions of the High Court wherein it is stated that in a reference pending under Section 18 of the Act, a third party cannot get herself

impleaded. When there is a Judgment in between the parties from the High Court giving certain directions that has to be strictly complied with but the decision of the Court in a Writ Petition in between the parties cannot be circumvented by relying upon the decision of the High Court rendered in other cases. When this Court in W.P.No.24199 of 2006 specifically directed the petitioner to approach the Court and get herself impleaded and ventilate her grievance, that order needs to be complied with instead of refusing the request on the ground that in some other decisions, the Court whether it be Supreme Court or High Court held that in a reference under Section 18 of the Act, a third party cannot get herself impleaded. That is more particularly so when the direction given by the High Court in a writ petition in between the parties has become final and so far as the parties are concerned, that is the final word which has to be implemented. Therefore, learned Senior Civil Judge has clearly erred in holding that the petitioner is not entitled to be impleaded as the sixth claimant in Land Acquisition O.P.

Learned Counsel appearing for the respondent has relied upon a Division Bench decision of this Court reported in SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION v. SECRETARY, NGO ASSOCIATION¹ and the decision of the Supreme Court reported in RAM PRAKASH AGARWAL v. GOPI KRISHAN (DEAD THROUGH L.Rs.)². It is laid down in the above authorities that an aggrieved person may make an application before the Land Acquisition Officer under Section 18 of 30 of the Act, but cannot make an application for impleadment or apportionment before the Reference Court and the Reference Court have no power to entertain an application under Order I Rule 10 C.P.C.

The above authoritative pronouncement, no doubt, disentitles a third party from getting herself impleaded in a reference before the Land Acquisition

¹ 2011 (3) ALT 617 (D.B)

² 2013 (3) SCJ 811

Tribunal. The facts of the case in hand are quiet distinct and as already stated above, the third party-petitioner is not a stranger insofar as the acquired land is concerned. According to her, from out of an extent of Ac.1-67 ½ cents which is held in the name of the daughters of Kirti Chandra Dev, it is the third party-petitioner who has purchased Ac.0-20 cents under registered sale deed as long back as on 26.03.1984. When the third party-petitioner approached the authorities and produced the documents and sought for compensation and reference, the same was not complied with. Therefore, the petitioner was constrained to file a writ petition, which as noticed above, was disposed of with a direction to the third part-petitioner to ventilate her grievance if any by getting herself impleaded in L.A.O.P.No.41 of 2006 which is pending on the file of the Senior Civil Judge, Sompeta. Had there been no such direction from the Writ Court, may be the petitioner can ask to avail her remedies only before the Land Acquisition authorities, but since she did not succeed there, she has to file the writ which gave the relief as stated above.

Learned Counsel appearing for the petitioner submits that the father of the two claimants, who are now claiming compensation for the entire extent of Ac.1-67 ½ cents in Survey No.221/2, has sold Ac.0-20 cents of land but since the same was not recorded, her name has not figured in any proceedings before the Land Acquisition Officer and also the consequential reference. If she is not allowed to put forth her case, she will be deprived of the legitimate amount which she is entitled to in view of the fact that she bought the land for a valuable consideration of Rs.12,93,605/- as long back as on 26.03.1984. In spite of her assertion that without recognizing her title over the property, the Land Acquisition Officer-cum-Revenue Divisional Officer has paid the total awarded amount to the two daughters of the vendor of the petitioner. In view of the foregoing discussion, it is held that the petitioner is entitled to be impleaded as

sixth claimant in view of the peculiar facts and circumstances, more particularly, in view of the direction given by this Court in W.P.No.24199 of 2006.

In the result, the civil revision petition is allowed, setting aside the impugned order of the Court below. Consequently, I.A.No.19/2016 filed by the petitioner before the court below is allowed, as prayed for.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 16.12.2016
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