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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LA.APP. 349/2014**

Date of Decision: 21.01.2016

KISHAN CHAND SHARMA & ANR. Appellants

Through: Mr.Sumit Sinha, Adv. for
 appellants.
 Ms.Usha Mann, Adv. for
 applicant in CM Appln.
 No.7520/2015

versus

CHET RAM SHARMA (SINCE DECEASED)

& ORS. Respondents

Through: Mr.Rajesh Yadav, Adv. for R1
 to R4.
 Mr.Sanjay Kumar Pathak,
 Mr.Sunil Kumar Jha,
 Mr.Kushal Raj Tater &
 Ms.Shreya Kalesra, Advs. for
 LAC/L&B.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln. 7520/2015

1. The applicant, by the aforesaid application seeks impleadment of Mandir Shri Kalkaji as one of the appellants in L.A(A) No.349/2014. Additionally, it has been prayed that if the applicant would not be a suitable person to represent the Mandir Shri Kalkaji (hereinafter called the deity), then considering the fact that the temple

Kalkaji is a public temple, another person be directed to represent the temple to assist the Court in effectively and completely adjudicating upon and settling all questions involved in the land acquisition appeal referred to above.

2. A preliminary notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter called the Act) was issued on 28.11.2002 and the consequent declaration under Section 6 was made on 13.06.2003 for acquisition of 8 Bighas 6 Biswas of land of village Bahapur. The award was announced on 06.06.2005 by the Land Acquisition Collector, South Delhi. However, the Land Acquisition Collector made a reference on 02.06.2006 with respect to file No.621/2/3/2/2/1 min (2-16) with the particulars of interested persons Nos.1 to 17 (IPs Nos.1 to 17) shown at serial No.1 to 17 in the array of parties and names of the disputants. The aforesaid reference was followed by amended memo on 16.12.2006 stating that out of the interested persons mentioned at serial Nos.1 to 24, IPs Nos.1 to 4 were the recorded owners of land whereas persons at serial Nos.5 to 24 were the objectors. Apart from this, an amount of Rs.1,26,22500.80 was also sent on 02.09.2006 along with reference under Section 30/31 of the Act with respect to land comprising aforesaid field numbers. The Trial Court was to decide the reference accordingly. The subject matter of the reference thus was the land measuring 2 bighas 16 biswas in the aforesaid field number/khasra number.

3. The case of the interested persons Nos.1 to 4 who are the defendants in the Land Acquisition Appeal No.349/2015 was that they were the recorded owners of the subject land. Land measuring 28

bighas was purchased by respondent No.1 against the sale consideration from vendor Mahant Prithi Nath in the year 1956 by registered sale deed dated 24.11.1956. The land was recorded/mutated in the name of respondent No.1 and subsequently respondent Nos.1 to 4 came to be the recorded owners and by virtue of such title, they had been prosecuting all kinds of their rights under law in various fora.

4. It is the case of the respondents that the land measuring 25 bighas and 4 biswas were acquired by an award No.2059 for which compensation was received by them. The subject land of 2 bighas and 16 biswas is out of the land of 28 bighas purchased by the respondent No.1 in 1956. The subject land (2 bighas 16 biswas), when acquired, the possession of said land was given by the respondents to Government. Hence the respondents claimed compensation for the same.

5. Before the reference Court, the other interested persons (Nos.5 to 93) claimed that the land in question belonged to Shamlath Thok Jogian and Thok Brahmans equally as per revenue records. Thok Jogians were having share in the offerings of the temple in the ratio of 1:3. Thok Jogian and Thok Brahmans were divided into sub-sects. Since they were the pujaris of the temple, therefore, they were also bhumidars and co-owners. In such an event, land could not have been sold or transferred by Mahant Prithi Nath to the respondent No.1.

6. The reference Court while taking into account the whole gamut of facts, evidence and the rival contentions of the parties held that respondent Nos.1 to 4 (IPs Nos.1 to 4) were in possession of the subject land and, therefore, they were entitled to the compensation

amount, to be apportioned amidst them equally. The other interested persons, two of whom are the appellants before this Court in Land Acquisition Appeal No.349/2015 could not prove their claim and consequently their claim was rejected.

7. The reference Court was of the opinion that there was no scope for it to reopen the case whether Mahant Prithi Nath, the vendor of the respondent No.1 lacked authority to execute the sale deed. The records mentioned in the form of jamabandi and khasra girdawari were read in favour of respondent Nos.1 to 4 (IPs 1 to 4). The sale deed and the jamabandi was not in contravention of each other and thereafter mutation took place.

8. The appellants Kishan Chand Sharma and Vinod Bhardwaj who claimed to be the pujaris of the temple have preferred an appeal against the judgment and order dated 20.08.2014 passed by the reference Court on the ground that the vendor of the property in question to the respondents did not have a right to alienate the property as he had no document of title in his favour. It has been urged by the appellants that the suit land was a reserve land for the joint use of pujaris and for the purposes of managing temple affairs and such land could not have been used for any personal benefits. The appellants have taken the plea that Mahant Prithi Nath was restrained by an order of the Civil Court by way of perpetual injunction from using the suit land for his personal benefit or even making any construction on any part of the suit land for his personal benefits. The appeal filed by Mahant Prithi Nath was also dismissed. A Regular Second Appeal No.51D/1958 was brought up before the Circuit Bench

of Punjab High Court at Delhi and that too stood dismissed on 10.04.1964. It is the further case of the appellants that the respondent Nos.1 to 4 had purchased the property in 1956 when the dispute relating to the title of the vendor was still pending consideration and thus respondent Nos.1 to 4 were not bonafide purchasers of the land.

9. It is in the present appeal that the aforesaid application for impleadment of Mandir Shri Kalkaji has been made by the applicant through one of the worshippers Shri Mam Chand son of Shri Bishambar, resident of 431, Chirag Delhi, New Delhi-110017. The applicant has submitted that the land acquired by the Government was the land which belonged to the deity and the vendor had no right whatsoever to sell those lands to respondent No.1. The compensation, therefore, was required to be paid to the deity and not to the respondent Nos.1 to 4. It was further urged that though the reference Court was made aware of the aforesaid facts but the “deity” or the temple was not impleaded. It was also submitted that even if any such application for impleadment was not made by the appellants, the reference Court ought to have exercised its powers under Order 1 Rule 10 of the CPC and should have made the temple a party to the proceedings.

10. Learned counsel appearing for the applicant has drawn the attention of this Court to the facts that the temple in question was constructed by one Raja Kedar Nath and huge tract of land was dedicated to the temple for its upkeep and maintenance of priests. At some distance to the aforesaid temple, there is another temple of Bhaironji where one Baba Balak Nath was the mahant. The vendor of

respondent Nos.1 to 4 (Prithi Nath) claimed himself to be the successor of Baba Balak Nath. Thus it was argued that right from the beginning Jogis were the priests of Bhaironji whereas Kalkaji temple was being maintained by Brahmins. In earlier times a dispute had arisen between Jogis and Brahmins with regard to the shares in the offerings of cash and kind and a settlement had been arrived at indicating that the income of the temple would be shared by the jogis and Brahmins at the rate of $1/4^{\text{th}}$ and $3/4^{\text{th}}$ i.e. 3 shares and 9 shares respectively.

11. It was further urged that the entire land was dedicated to the temple and it was shown in the revenue records as “Shamlat”. Thus the land was not ownerless land but it was collectively owned. It was therefore, seriously contended by the applicant that the vendor of respondent Nos.1 to 4 namely Mahant Prithi Nath knew that the land in question was the property of the temple, even then he illegally sold the same to the respondents.

12. Out of 28 bighas which was purchased by respondent No.1 from Mahant Prithi Nath, 25 bighas and 4 biswas were also acquired by the appropriate Government about which neither the appellant nor the applicant was aware of. The amount of compensation, therefore, wrongly went to the respondent Nos.1 to 4.

13. Subsequently the appropriate Government issued another notification in the year 2002 acquiring the land measuring 8 bighas 6 biswas which includes the remaining 2 bighas and 16 biswas of land which belonged to the temple.

14. It has been pointed out that the appellants had filed a Civil Suit

No.1322/2006 (subsequently renumbered as Civil Suit No.288/10/06) before the competent Civil Judge against respondent Nos.1 to 4. The suit was dismissed holding that the reference Court is a Civil Court of original jurisdiction and the issue of title could be decided by the reference Court.

15. It is submitted that in the meantime SLP (C) No.32452-32453/2013 was filed in the Supreme Court, wherein a direction was given to the authorities to file an affidavit at the earliest clearly stipulating the facts regarding ownership, title and entitlement of land inside the temple and around the temple and also as to what is the actual area and who was the donor of the land.

16. Thus the reference Court committed an error, it was urged, by not impleading the temple (deity) as a party before deciding the case. It is further submitted on behalf of the applicant that initially he supported the cause of the appellants but later realised that the appellants who are the pujaris, because of their penury, would not contest the appeal and, therefore, irreparable damage would be done to the interest of the temple.

17. In support of the aforesaid contentions, the applicant has referred to the decision rendered by the Supreme Court in ***Narayan Bhagwantrao Gosavi Balajiwale vs. Gopal Vinayak Gosavi and Ors***, AIR 1960 SC 100 (V 47 C 18) wherein it was held that it is necessary that the “deity” should be joined as a party to the suit for any declaration to be effective and binding. In the absence of the deity being impleaded as a proper party, any declaration given against the interest of the deity will not bind the deity.

18. In the aforesaid case, the Court had taken note of the fact that such was necessary only in a suit under Section 5(3) of the Charitable and Religious Trusts Act, 1920 for a declaration that the deity and the properties attached to the temple were not under a public trust but were the private properties of the plaintiff and that the defendants as representing the entire Hindu community had no right whatsoever. In such a situation, it was necessary that the deity be joined as a proper party to the suit.

19. In the present case, no such issue has been raised whether the temple in question is a public trust or a private temple.

20. A reference has been made by the applicant to other cases namely *Radha Prasad Singh vs. Gajadhar Singh and Ors*, AIR 1960 SC 115 and *Bhagauti Prasad Khetan and etc. Vs. Laxminathji Maharaj and etc.* AIR 1985 Allahabad 228. In *Radha Prasad Singh* (Supra) it was held that an idol is in a position of a minor and when any person representing the minor leaves it in a lurch, a person interested in the worship of the idol could be clothed with an adhoc power of representation to protect its interest. Thus, the Supreme Court, in the aforesaid cases held such consideration to be one of the reasons to permit a worshipper under certain circumstances to represent the idol and to recover the property of the idol.

21. The applicant claims to be one of the worshippers of the temple. It is to be noted that for quite some time the applicant supported the case of the appellants (pujaris) but later on, thought that because of straightened financial circumstances, the appellants may not contest the appeal and per force the respondent Nos.1 to 4 would succeed.

22. If that be the reason behind the filing of the aforesaid application for impleadment of deity or the applicant himself as a guardian of the deity, the applicant would only be well advised to support the case of the appellants as and when they require any financial help. It is not the case of the applicant that the appellants are not interested in recovering the property of the temple.

23. It was further argued by the applicant that khasra entries are no proof of title and ownership and that Shamlat land cannot be claimed by any person. Lastly it was urged that with respect to the earlier award regarding acquisition of 28 bighas in Khasra No.621/2/3/2/2/1, the reference Court ordered for compensation to the respondent Nos.1 to 4 and others in view of the compromise by the parties and not on the merits of the case.

24. Thus the applicant prays for, in the interest of justice, that the deity (Mandir Shri Kalkaji) be impleaded as one of the appellants in L.A Appeal No.349/2014 either through the applicant or through any other person whom the Court may think fit and it would cause prejudice to none of the parties in appeal. The balance of convenience, according to the applicant, clearly lies in favour of the deity. Learned counsel for the applicant submits that under such circumstances if the application under Order 1 Rule 10 is not allowed, it would only be in the nature of *ex debito justitiae* that Section 151 of the CPC be invoked as the applicant has been rendered without remedy.

25. The aforesaid application was strongly contested by the respondent Nos.1 to 4 who submitted that the proceedings in the land acquisition case stood concluded. The applicant did not make any

application either under Section 18 or Section 30 of the Act. The jurisdiction of the reference Court is only with respect to the reference and it extends to determining the adequacy or otherwise of the amount of compensation to the persons whose lands have been acquired and to those who claimed the awarded amount or any apportionment thereof. Thus the only source of power to a land acquisition Judge is from the order of reference to which he is bound. The jurisdiction extends to determining the adequacy or otherwise of the amount of compensation paid and to whom to be paid under the award made by the Collector.

26. It is submitted that the land acquisition Judge is not required to entertain any application of *pro interesse suo*.

27. A reference was made to a decision rendered in ***Ram Prakash Agarwal and Another vs. Gopi Krishan (dead through LRs) and Ors***, (2013) 11 SCC 296 wherein it was held 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, cannot get himself impleaded directly before the reference Court. In the same judgment it was conclusively held that inherent powers under Section 151 CPC can only be exercised by the Court to redress such grievances for which no remedy is provided for in the Code of Civil Procedure. It is further submitted on behalf of the respondents that at such a belated stage, the prayer of the applicant cannot be allowed for impleading either him as a guardian of the deity or the deity as a party in the Land Acquisition Appeal No.349/2014.

28. Heard the counsel for the parties.

29. Admittedly the applicant was not one of the objectors. The

objection of the appellants by the land acquisition Judge was overruled. Hence, they have preferred Land Acquisition Appeal No.349/2014. The applicant has been supporting the appellant from the very beginning. It is not known as to how the applicant has come to the conclusion that the appellants would not be in a position to contest the appeal. The appellants being penury stricken is the only ground which has been raised by the applicant to show to the Court that the interest of deity would be better served if the deity is made a party or anybody as a guardian to the minor deity is made a party.

30. A reference Court is not entitled to amend a reference under Section 30 and 31 into a reference also under Section 18 of the Land Acquisition Act. It is no longer in dispute that the jurisdiction of the Courts in land acquisition matters is a special one arising only when a specific objection is taken to the Collector's award and confined to the consideration of that objection.

31. Admittedly the applicant was not a party before the Land Acquisition Judge. The applicant only claims to be a worshipper. Allowing the application of the applicant would amount to reopening a settled issue which is neither permissible under Order 1 Rule 10 nor under Section 151 of the Code of Civil Procedure. The entire land of which the respondents claim to be the owners, was conveyed to respondent No.1 by one sale deed. With regard to an earlier notification for acquisition, an award was announced and compensation was paid to the respondent Nos.1 to 4. The present notification and award is with respect to 8 bighas and 6 biswas of land, out of which, 2 bighas and 16 biswas are the part of the same property

which was conveyed to respondent Nos.1 to 4 and they fall in khasra No.621/2/3/2/2/1 originally forming part of first Khatauni of Jamabandi of 1908-09. The issue of maintenance of temple or the interest of the deity as such is not the issue here in appeal nor was such issue ever raised before the Land Acquisition Judge. Thus the only effect of impleading the temple Kalkaji (deity) or the applicant would be reopening a long settled issue and would not be in the interest of anyone.

32. For the reasons aforerecorded there is no merit in the application and the same is dismissed.

CM Appln. 16556/2014 & LA APP No.349/2014

Renotify on 14.03.2016.

ASHUTOSH KUMAR, J

JANUARY 21, 2016

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