

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 64 OF 2006
IN
LAND ACQUISITION REFERENCE NO. 85 OF 1987**

Shantaben Popat Gala & Ors. ... Applicants

In the matter of:

The Special Land Acquisition Officer,
Bombay and Bombay Suburban District ... SLAO

V/s.

Dr. Faram Fruch Irani & Ors. ... Claimants.

Mr. Joseph Fernandes for the Applicant.

Mr. Mohit Shah, AGP for the SLAO.

Ms. Rashmi Patil a/w Ms. Priyanka Gharge i/b S.K. Srivastav & Co. for
Claimant No.1.

Mr. S.R. Rajguru for Acquiring Body.

CORAM : K. K. TATED, J.

DATED : 13/02/2017

P.C.:

. Heard learned Counsel for the parties.

2 Though the Acquiring body is not party in LAR, Advocate Mr. S.R. Rajguru appeared and started opposing this Chamber Summons. His submissions cannot be considered because Acquiring Body is not a party in this Chamber Summons as well as Land Acquisition Reference.

3 This Chamber Summons preferred by applicants for joining them as party applicants in LAR No. 85 of 1987 on the basis of order dated

25.09.1998 passed by this Court in Notice of Motion No. 6705 of 1997 in Suit No. 4436 of 1997 .

4 The learned Counsel for the applicant submits that the Claimant Nos. 4 and 5/defendant Nos. 7 and 8 in suit No. 4436 of 1997 filed consent terms with plaintiffs in that suit (applicants in the present Chamber Summons). He submits that as per the said Consent Terms, Claimants Nos. 4 and 5 relinquished their rights, title and interest in respect of compensation for acquiring land and interest in LAR No. 85 of 1997 in their favour. In support of this contention, he relies on paragraph 5, 6 and 7 of the Consent Terms dated 19.09.1998 which reads thus:

“5. Agreed and declared that Plaintiffs alone are entitled to and therefore received all the compensation which had been awarded under an Award dated 23rd September, 1986 by Special Land Acquisition Officers, Bombay & B.S.D under Land Acquisition Act in respect of the portion of the land so acquired thereunder or such enhanced compensation that may be granted after adjudication of the claim for enhancement made by late Mr. Limji Kaikhushru Pandey before this Hon'ble Court to the extent of 1/6th share of the 8th defendant. The Plaintiffs are hereafter entitled to and as such shall be at liberty to join as parties and to prosecute or pursue and take part in all the pending proceedings relating to the suit property directly or indirectly including Land Acquisition Reference No. 85 of 1987 pending in this Hon'ble Court to the extent of any right title or interest that Defendant No.8 may have in the suit property. The Plaintiffs are also entitled to settle the claim of compensation in the Award dated 20th September, 1986 in Land Acquisition proceedings, and claim for enhancement of compensation as the Plaintiffs may decide in their absolute discretion and the Defendant No.8 shall not interfere with the exercise of the Plaintiffs rights herein granted.

6. The Plaintiffs are at liberty to withdraw the 1/6th share of Defendant No.8 in the amount of Rs.16,57,082.40 (Rs.

Sixteen Lacs Fifty Seven Thousand Eighty Two and Paise Forty Only) deposited in this Hon'ble Court and invested by the Prothonotary and Senior Master, High Court, Mumbai in Fixed Deposit which amount was deposited by the Land Acquisition Authorities pursuant to the Award dated 23rd September 1986 in respect of a Reference under Section 30 of Land Acquisition and the interest accrued thereon upon such above and further interest on such share from the date hereof till payment AFTER (i) any settlement is arrived at (ii) or the claim of enhancement preferred by late Limji Kaikhushru Pandey and others is adjudicated upon between the Plaintiffs and the Land Acquisition Authorities in Reference No.85 of 1987.

7. The Plaintiffs are entitled to and at liberty to initiate or take part and prosecute all or any proceedings pending in any court of law in their absolute discretion to the extent of the share of defendant No.8 in the suit property or any benefits in lieu thereof and the Defendant No.8 will not object nor shall interfere with the exercise of the plaintiffs rights herein granted."

5 The learned Counsel for the applicants submits that though they tried to serve the Claimant Nos. 4 and 5, they were not available on their addresses as mentioned in Land Acquisition Reference. He submits that in view of the order passed by this Court (Coram : D. K. Trivedi, J) and 25.09.1998 in Notice of Motion no. 6705 of 1997 in Suit No. 4436 of 1997 they are necessary party in LAR by deleting the names of Claimant Nos. 4 and 5.

6 The learned Counsel for the Claimant No.1 vehemently opposed the present Chamber Summons. She filed affidavit-in-reply dated 07.12.2016. She submits that during the pendency of LAR, the Claimants Nos. 4 and 5 transferred their rights in favour of applicants which is not allowed according to law. She submits that the Claimant No.2 filed S.C. Suit No. 7728 of 1990 against Claimant No.1. She

submits that the suit filed by Claimant No.2 was dismissed by the City Civil Court by Judgment and Decree dated 22.04.1997. Against that Judgment and Decree, claimant No.2 filed appeal and same is pending before this Court. She submits that in view of the pendency of the Appeal against Judgment and Decree dated 22.04.1997, there is no question of allowing the present Chamber Summons.

7 The learned AGP for SLAO submits to the courts order without prejudice their rights and contentions.

8 In the present proceeding, the Claimant Nos. 4 and 5 filed Consent Terms dated 19.09.1998 in suit No. 4436 of 1997 (High Court original Side) and relinquished their rights in respect of their claim for compensation in LAR No. 85 of 1987 in favour of the Applicants. Hence, Applicants are interested and necessary party in the present proceeding.

9 Considering the submissions made by the learned Counsel for the applicants and order dated 25.09.1998 in Notice of Motion No. 6705 of 1997 in Suit No. 4436 of 1997 (High Court original side) and Consent Terms dated 19.09.1998, I am satisfied that applicants have made out case for allowing this Chamber Summons.

10 Hence, following order is passed:

a) Delay in preferring the Chamber Summons is condoned.

b) Applicants are permitted to join as Claimants in LAR No. 85 of 1987 in place of Claimant Nos. 4 and 5.

c) Special Land Acquisition Officer is directed to carry out appropriate amendment in LAR No. 85 of 1987 by deleting the names of Claimant Nos. 4 and 5 and joining the Applicants as Claimant Nos. 6,7, 8, 9 and 10.

d) Chamber Summons is disposed of accordingly.

e) No order as to costs.

(K.K.TATED, J.)