

HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3234 of 2013

ORDER:

This petition under Article 227 of Constitution of India is filed by unsuccessful petitioners in I.A.No.762 of 2012 in OP.No.26 of 2006 on the file of 1st Senior Civil Judge, City Civil Court, Hyderabad, dated 19-03-2013. The petitioners filed petition under Section 151 C.P.C. to delete the names of the respondents 2 to 4 and 6 and claimants 1,3, 4 and 6 from the reference as they are not necessary and proper parties to the reference alleging that reference was made under Section 18 of Land Acquisition Act (for short " the Act") by respondent No.1 on the application of the petitioners/ claimant No.2 and the respondent No.1 arrayed the petitioners/ respondent No.5 alone as the claimants as they filed application under Section 18 of the Act who made reference in the name of wrong persons, who did not file objections for reference under Section 18 of the Act and on account of such arraying respondents 2 to 4 and 6/ claimants 1,3,4 and 6 notice could not be served on them. Hence, sought for the above relief.

The 1st respondent/Land Acquisition Officer filed counter opposing the petitioner on the ground that the land under acquisition was located at Hyderabad Urban Agglomeration Area, the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad was addressed a letter seeking clarification as to whether the land notified is surplus or retainable land. During the award enquiry, the claimants stated to have filed documents relating to clearance of Urban Land Ceiling (ULC), which was referred to the said Special Officer. The Special Officer and Competent authority under ULC stated to have informed that no permission was granted through proceedings No.153/ 27/ 85, dated 25-02-1986 and expressed their doubts about genuineness of

alleged clearance. Keeping in view of rival claims and by following statutory procedure under the Act, referred the matter to civil Court under Section 30 of the Act for adjudication of disputes between the claimants and the same is registered as OP.No.13 of 2006. The respondent No.1 arrayed respondents 2 to 4 and 6 as claimants 1,3,4 and 6 and therefore, they cannot be deleted from the array of claimants in the petition and prayed for dismissal of the petition.

Upon hearing of argument of both counsel, the trial Court dismissed the petition explaining reasons, stating that respondents 2 to 4 and 6 as interested persons within the meaning of Section 18 and 19(1)(b) of the Act.

Aggrieved by order passed by the trial Court, the present revision is filed contending that when objections were filed under Section 18 of the Act, only those objectors alone be arrayed as claimants in reference under Section 18 of the Act, the persons who did not put forth their objections under Section 18 of the Act cannot be arrayed as claimants in reference under Section 18 of the Act and the trial Court did not consider the scope of Section 18 of the Act in proper perspective and committed error and prayed to set aside the same.

During hearing learned counsel for the petitioner while reiterating the contentions, it is contended that enquiry under Section 30 and 18 of the Act is different. While Section 30 leaves the Collector with power of discretion in the matter, under Section 18 the Collector does not possess such power of discretion and subject matter of reference under Section 30 of the Act is limited to cases in which Government is not directly interested, whereas Section 18 contains definite provision for limitation. Further a person who is not a party to the proceedings can ask for reference under Section 30 who may not be otherwise entitled in terms

of Section 18 of the Act in the circumstances and placed reliance on the judgment of larger Bench of this Court in Repaka Bhyravamurthy v. Muppidi Venkataraju¹. On the strength of principle laid down in the above judgment, he contended that persons who did not file objections under Section 18 of the Act cannot be arrayed as claimants in reference under Section 18 of the Act. But the trial Court did not consider the objections in proper perspective under Section 18 of the Act and committed error.

Notice on the respondents was served and learned Government Pleader for Land Acquisition appeared for respondents 1 and 2, but none appeared for the other respondents i.e. respondents 3, 4, 5 and 6 herein and no proof of service is filed.

Considering rival contentions and perused the material available on record, the point that arises for consideration is "*whether the respondents 2 to 4 and 6/ claimants 1, 3, 4 and 6 are liable to be deleted from the array of parties in reference under Section 18 of the Act?*"

POINT:

Undisputedly, a reference was made under Section 18 of the Act on the objections filed by the petitioners under Section 18 by respondent No.1 to the civil Court for fixation of fair compensation and the petitioners and the respondent No.5 alone have filed objections under Section 18 of the Act, other respondents did not file any objections under Section 18 of the Act. Section 18 deals with power of Land Acquisition Officer to make reference to the civil Court and it is apposite here to extract Section 18 of the Act for better appreciation, and accordingly, extracted hereunder:

¹ 2001(5) ALT 565(L.B.)

Section 18 (1): Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Section 19 deals with necessary particulars of reference.

Section 19 (1): In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reasons to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

A co-joint reading of Section 18 and 19 (1) (a), (b), (c) of the Land Acquisition Act, it is evident that only on the application of interested person who did not accept the award file application to the Collector requesting Collector to refer the matter for determination of compensation by the Court. Section 19(1) makes it clear that in making the reference, the Collector shall state, for the information to the Court, in writing under his hand the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon, the names of the persons whom he has reason to think interested in such land etc., Thus a referring officer i.e. the Collector-respondent No.1 herein has to disclose the names of persons who are interested and it is

the legal obligation of the 1st respondent to state the names of the persons who are interested in said land in the opinion of Collector. In the present case, a reference was already made under Section 30 of the Act, which is the subject matter of OP.No.13 of 2006 but reference under Section 18 of the Act is subsequent reference. If Section 18 of the Act is read in isolation, the persons who are interested who has not accepted the award amount shall be arrayed as claimants in reference under Section 18 of the Act. Section 19 (1) (b) of the Act obligates the Referring Officer to disclose the names of the persons who are interested in such land. Therefore, the respondent No.1 disclosed the names of the persons who are interested in the land, but they cannot be arrayed as claimants. In any view of the matter, the dispute in reference under Section 30 is totally distinct from reference under Section 18 of the Act. Section 18 is for fixation of compensation in Land Acquisition by the Court after passing award when the persons interested in the land did not accept the compensation in the award. Reference under Section 18 is a dispute with regard to quantum of compensation between the Government and persons interested in the land, who filed objection for reference under Section 18 of the Act, requesting Land Acquisition Officer to refer the matter to Court for determination of compensation, but whereas Section 30 of the Act deals with reference for settlement of *interse* disputes when the amount of compensation has been settled under Section 11, if there is any dispute arises as to the apportionment of the same or any part thereof is payable. Therefore reference under Section 30 of the Act and Section 18 of the Act is totally distinct and those two references cannot be compared or equated with one another.

A bare reading of Section 18 (1) discloses that any person interested in land who has not accepted the award may file petition in writing making request to Collector to refer the matter for determination of the compensation to the civil Court be arrayed as parties i.e. claimants in a reference under Section 18. But here, instead of disclosing the names of persons interested, the Collector arrayed the respondents 2 to 4 and 6 as claimants. In the larger Bench Judgment in *Repaka Bhyravamurthy v. Muppidi Venkataraju* referred (1 supra) though reference is made drawing distinction between reference under Sections 18 and 30 based on various judgments of the Apex Court without referring to those judgments there in. But that would not help to the petitioners. However, the trial Court based on section 19 (1) concluded that all persons interested in the land shall be arrayed as claimants in a reference under Section 18 of the Act without considering the scope of Section 18 of the Act, thus conclusion is obviously incorrect, as Section 19(1) mandates the Collector to disclose the names or details of person interested, but not for arraying as claimants or respondents.

It is evident from the order passed by the Court that no notice was sent to the respondents 2 to 4 and 6/ claimants 1,3,4 and 6. Only counsel for the petitioners and Assistant Government Pleader for respondent No.1 alone appeared before the trial Court and no notice was served on the respondents, proposed to be deleted. Passing of impugned order by the trial Court even without notice to the respondents 2 to 4 and 6/ claimants 1,3,4 and 6 is an error apparent on the face of record. Even otherwise, this Court ordered notice to the respondents before admission on 10-09-2015 and in pursuance to the order, notice was sent but proof of service is not filed as per the Court order dated 10-09-2015. No further steps have been taken till today to

serve the notice on the respondents. Therefore, this Court cannot pass order in the absence of respondents 2 to 4 and 6/ claimants 1, 3, 4 and 6 and passing of order by the trial Court without serving notice on the said respondents/ claimants and without affording an opportunity to them is illegality and it is a case of violation of principles of natural justice. Therefore, the order passed by the trial Court is contrary to the principles of natural justice and in those circumstances, this Court has no option except to set aside the order passed in challenge in I.A.No.762 of 2012 in OP.No.26 of 2006 on the ground that no notice was served on the respondents proposed to be deleted from the array of parties in the said OP.

The present petition is filed under Section 151 of CPC requesting the trial Court to exercise its inherent power and delete the respondents 2 to 4 and 6. Order 1 of CPC deals with parties to the suit. Order 1 Rule 10(2) of CPC conferred power on the Court at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name, of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. Therefore, the power of addition or deletion of parties under Order 1 Rule 10 of CPC is not such of inherent jurisdiction of the Court but it is judicial discretion, it has to be exercised in view of the facts and circumstances of a particular case. But in the present case, petition was filed under Section 151 CPC though a specific provision under Order 1 Rule 10 (2) CPC is available either to implead or

delete any of the parties to the proceedings. When the specific provision is available, normally the Court cannot exercise its power under Section 151 CPC, when the Trial Court passed an order against the principles of natural justice and failed to exercise discretion, this Court can interfere with such order, exercising inherent jurisdiction conferred on the Court by virtue of Article 227 of the Constitution of India. The Court summarized the instance where such power can be exercised.

In *R. Suresh Babu v. G. Rajalingam*² held as under:

“ Though this Court can exercise revisional jurisdiction under Article 227, questions regarding validity of the transactions cannot be decided, while exercising jurisdiction under Article 227, since the scope of revision under Article 227 is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdiction, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India:

- a) Where the only question involved is one of interpretation of deed;

² 2017(2) ALD 282

- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) to correct an error of law, not being an error apparent on the face of the record;
- f) to interfere with the intra vires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice.

Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu".

Invoking inherent power under Section 151 C.P.C. does not arise in all the cases for the reason that when specific provision contained in C.P.C. If there is no specific provision, which deals with addition or deletion of the parties, the Court can exercise its inherent power under Section 151 C.P.C. When there is specific provision, exercising power under Section 151 C.P.C. is improbable and such exercise of power is illegal exercise.

In the result, revision petition is allowed setting aside the order in I.A.No.762 of 2012 in O.P.No.26 of 2006. However, the matter is remanded to the trial Court to issue notice to the respondents 2 to 4 and 6 proposed to be deleted and afford opportunity of hearing to contest the matter and decide in accordance with law, as passing any order without notice is violation of principles of natural justice. The trial

Court is directed to decide the petition as expeditiously as possible in any event within two months immediately after service of notice on the respondents proposed to be deleted. In consequence, Miscellaneous Petitions, if any, pending in this revision petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

21-06-2017
Nvl

