

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.334 of 2017

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 08.12.2016 passed in I.A.No.756 of 2015 in L.A.O.P.No.74 of 2013 by the Senior Civil Judge, Narsapuram.

2. The petitioner, who is a third party, filed a petition under Order I Rule 10 of CPC in a reference under Section 18 of Land Acquisition Act, 1894 (for short 'the Act') stating that on representation of one Jakkamsetti Saraschandra Babu and another person, by name, Jakkamsetti Bhaskara Rao, a reference was made to the Court arraying those two persons as claimants. Subsequently, R3 and R4 came on record in LAOP on a petition bearing I.A.No.464 of 2014. The petitioner further stated that a suit in O.S.No.18 of 2009 filed for partition is pending on the file of VI Additional District Judge, Narsapur, and R2 to R5 and the petitioner are parties in the said suit. The basis for the claim in the said suit is a will executed by the grandmother of petitioner and thereby, he became the owner of the property as a legatee under the said will. Therefore, the petitioner, who is interested in the property, filed a petition under Order I Rule 10 of CPC. The trial Court, based on the principles laid down in **Municipality, Nalgonda vs. Hakeem Mohiuddin¹** and **Cyrus Investment (P) Ltd., Hyderabad Vs. Mohd. Fareeduddin Khan²**, dismissed the said petition holding that Order I

¹ 1965(2) ALT 237

² 1994 AIR (AP) 199

Rule 10 of CPC is not applicable to the reference under Section 18 of the Act.

3. Aggrieved by the order passed by the trial Court, the present revision is filed on various grounds, mainly on the ground that the reference is under Section 30 of the Act, but the trial Court did not consider the nature of the reference made to the Court and when respondents 3 and 4 were allowed to come on record as parties, the petitioner is also entitled to come on record and thereby, the order passed by the trial Court is erroneous and illegal and prayed to set aside the order passed by the trial Court by permitting him to come on record as respondent/claimant in the reference.

4. During hearing, the petitioner/party-in-person, while reiterating his contentions, placed reliance on bunch of judgments in support of his contention and whereas the counsel for respondents, Sri G. Naresh Kumar, has relied upon the principle laid down in the judgment of large constitutional Bench of this Court in **Repaka Byhravamurthy and another Vs. Muppidi Venkataraju and others**³, and prayed to dismiss the petition affirming the order passed by the trial Court.

5. Undisputedly, the reference is made under Section 18 of the Act but not under Section 30 of the Act, on receipt of objections under Section 11 of the Act and after issuance of an award notice. But the petitioner did not file any objections after receiving notice under Section 11 or 12(2) of the Act, but the suit in O.S.No.18 of

³ CDJ 2001 APGC 1586

2009 was filed for partition, the petitioner, based on the will executed by his grandmother, filed the present petition to come on record as claimant in reference under Section 18 of the Act. But the judgment of Constitutional Bench of this Court in **Repaka Byhravamurthy's** case, referred to supra, has direct bearing on the issue and the bench consisting of 5 Judges of this Court held that Order I Rule 10 CPC has no application to the proceedings in reference under Section 18 of the Act.

6. In view of the judgment of the constitutional Bench of this Court, a third party cannot come on record under Order I Rule 10 CPC in a reference under Section 18 of the Act. But, in the later judgment in **Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen and another Vs. Syed Zindasha and others**⁴, the Apex Court held that in a reference under Section 18 of the Act for enhancement of compensation, the provisions of Order I Rule 10 of CPC for impleadment of a third party is not maintainable since the Land Acquisition Act itself is self-contained code and third party cannot be allowed to come on record. In view of this judgment, in a reference under Section 18 of the Act, the petitioner cannot be permitted to come on record under Order I Rule 10 of CPC. Even according to Section 18 of the Act, the only persons, who filed objections, alone are arrayed as claimants. But, under Section 19 of the Act, names of the persons, who are interested, can also disclosed in the reference made under Section 18 of the Act. That does not mean that the petitioner is entitled to come on record as the person interested. Admittedly, the suit in O.S.No.18 of 2009 for

⁴ (2009) 12 SCC 280

declaration of title pertaining to the schedule property is pending and if the petitioner succeeds in the suit, he is entitled to get the compensation for the land acquired, if it is the subject matter of the said suit. But, in a reference under Section 18 of the Act, the petitioner is not entitled to come on record.

7. The petitioner/party-in-person has placed reliance in **Sardar Amarjit Singh Kalra (dead) by LRs and others Vs. Pramod Gupta (SMT)(dead) by LRs and others**⁵, wherein the Apex Court discussed about the scope of Order I Rule 10 of CPC with reference to the provisions of Land Acquisition Act, more particularly, Sections 11,18, 30 and 31 of the Act and held that in a reference under Sections 30 and 31(2) of the Act, a party can come on record. But, this principle has no application in the present facts of the case. Similarly, the petitioner placed reliance in **Ram Prakash Agarwal and another V. Gopi Krishan and others**⁶, wherein the Apex Court held in paragraph 22 as under:

“In the instant case, the proceedings stood concluded so far as the Court of first instance is concerned and the respondent was not the party before the said Court. Permitting an application under Order 9 Rule 13 CPC by a non-party, would amount to adding a party to the case, which is provided for under Order I Rule 10 CPC, or setting aside the ex parte judgment and decree i.e., seeking a declaration that the decree is null and void for any reason, which can be sought independently by such a party. In the instant case, as the fraud, if any, as alleged, has been committed upon a party, and not upon the Court, the same is not a case where Section 151 CPC could be resorted to by the Court, to rectify a mistake, if any.

Facts of above decision though relates to a reference under Sections 18,30 and 31 of the Act, a third party filed an application

⁵ (2003) 3 SCC 272

⁶ (2013) 11 SCC 296

under Order 9 Rule 13 CPC to set aside the award and the Apex Court held that it amounts to impleading a third party, which is impermissible.

8. The petitioner further relied upon the decision of the Apex Court in **Neyveli Lignite Corporation Ltd., V. Special Tahsildar (Land Acquisition) Neyveli and others**⁷. This decision is also not applicable to the present facts of the case for the reason that the Corporation is the owner of the property, and even otherwise, in view of the later judgment of the Apex Court in **Muthavalli's** case, referred to supra, this principle cannot be applied to the present facts of the case. The petitioner has further relied upon the judgment of the Division Bench of this Court in **Mittapally Rajyalaxmi and others V. Land Acquisition Officer (Sub-Collector), Asifabad and others**⁸, which pertains to a reference under Section 30 of the Act. Similarly, he also relied upon the decisions of this Court in **Gollapelli Ponnamm V. Special Deputy Collector-LA-Unit, Singareni Collieries Company Ltd., Godavarikhani, Karimnagar District**⁹ and **Bodela Siva Bhaskar Reddy and others V. Government of Andhra Pradesh and others**¹⁰. In **Gollapelli Ponnamm's** case, referred to supra, this Court held in paragraph No.5 as under:

“The Collector has to pass an award after considering the objections and communicate the same to the petitioner, and if there is any serious dispute with regard to the person, who is entitled to receive compensation, he shall then refer the dispute to the competent civil Court under Section 30 of the Act. If the petitioner feels aggrieved by the award

⁷ (1995) 1 SCC 221

⁸ 2014(2) ALD 547 (DB)

⁹ 2013(2) ALD 23

¹⁰ 2013(2) ALD 586

that may be passed by the Collector, he shall be free to seek a reference of the dispute under Section 18 of the Land Acquisition Act, within the time stipulated therein.

Since the dispute is with regard to the award passed, the principle has no bearing on the issue involved in this matter. Similarly, in the later judgments also, the Court declared the same law.

9. On considering the available material on record and including the law declared by this Court and also applying the principle laid down by the Apex Court in **Muthavalli's** case, referred to supra, I find no grounds to allow this civil revision petition. The order passed by the trial Court does not suffer from any illegality warranting interference by this Court while exercising jurisdiction under Article 227 of the Constitution of India. Hence, I find no grounds to interfere with the findings. Consequently, the Civil Revision Petition is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

11th July, 2017
sj