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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 21.09.2017

+ **W.P.(C) 2939/2016 & CM No.12280-12281/2016**

**THE PEERLESS GENERAL FINANCE AND INVESTMENT
COMPANY LIMITED** Petitioner

Through: Mr. Bhaskar P. Gupta, Sr. Adv.,
Mr. Abhijit Chatterjee, Sr. Adv. with
Mr. S. Sukumaran, Mr. Anand Sukumar &
Mr. Bhuupesh Kumar Pathak, Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Sanjay Kumar Pathak with
Mrs. K. Kaomudi Kiran Pathak and Mr. Sunil
Kumar Jha, Adv. for R-1 & 2.
Ms. Astha Gupta, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The writ petitioner is aggrieved by the order of the learned Additional District Judge (ADJ), who rejected its application for impleadment applied under Section 30/31 of the Land Acquisition Act, 1894 (hereafter referred to as "the Act"), contended that it had an enforceable interest in the underlying properties that stood acquired in its status as mortgagee of the lands.

2. The brief facts of the case are that on 28.02.1991, the owner of lands which were subjected to acquisition, deposited title deeds with the petitioner, and created an equitable mortgage, for the sum of ₹11.5 crores

advanced. The equitable mortgage was evidenced to the owner (hereafter referred to as “the mortgagee”). There was a default in the repayment of the amount advanced; the petitioner claims that the sum due and payable was over ₹20 crores as on 11.11.1997. Apparently, the petitioner instituted a suit [CS(OS) No.392/1997] before the Calcutta High Court seeking decree. In that proceeding, there was no claim to enforce the mortgage of the lands. The suit ended in a compromise – recorded on 05.12.1997, where the land owner/mortgagor agreed to suffer a decree for a sum of ₹201,09,50,831/-. The default in repayment of this amount led to initiation of recovery proceedings which too was compromised on 23.05.2002. The composition, in turn, resisted the liability of the owner as ₹43.85 crores repayable in 12 equal monthly instalments.

3. On 02.09.2003, the Government of NCT of Delhi initiated acquisition proceedings proposing to acquire lands under the Act. The urgency clause under Section 17(1) was invoked and possession of the mortgaged lands was taken over by the appropriate Government on 22.09.2003. The Land Acquisition Collector (LAC) determined compensation – as was acquired land and assessed it for a total sum of ₹79,54,073/-, by award dated 05.01.2005. This amount was sent to the Additional District Judge, under Section 31(2) of the Act.

4. The petitioner claiming its rights as a mortgagee and an unsatisfied decree holder applied to the District Judge i.e. the Reference Court on 26.09.2009 to be made as a party in the proceedings pending before it. Another application was made on 06.04.2011. Both these applications were rejected by the Reference Court on 29.02.2016.

5. The Reference Court by the impugned order reasoned as follows:

“8. This is a petition U/s 30-31 of LA Act. The compensation has already been announced while passing the award. The court has to decide the reference petition in respect of the share / ownership of the IP’s. Moreover, from the facts as set out in the application, it seems that on the basis of mortgage, suit had already been filed and decree has already been passed. So, no mortgage seems to be in existence at this stage. According to the claim of the applicant, it is a necessary party in the reference petition, being mortgagee of the acquired land.

9. On the other hand, ld. Counsel for the Union of India has contended that this is a reference petition filed U/s 30-31 of LA Act, forwarded by the LAC. As per record, the reference petition has been received by this court to decide inter-se dispute between the parties about the ownership to decide as to whom the compensation will be payable and to what extent. The applicant wants to be impleaded as interested party in the reference petition, however, the question as to whether this court has any jurisdiction to implead the applicant as interested party in the reference petition.

*10. The jurisdiction of the Reference Court, vis-à-vis “persons interested” has been explained by the Court in **Shyamali Das vs. Illa Chowdhry and others**, AIR 2007 SC 215, holding that the Reference Court does not have the jurisdiction to entertain any application of pro interesse suo, or in the nature thereof. The Court held as under:*

“The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also to those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. His jurisdiction is to

determine adequacy and otherwise of the amount of compensation paid under the award made by the Collector”. Thus holding that, “It is not within his domain to entertain any application of pro interesse suo or in the nature thereof.”

The plea of the appellant therein, stating that the title dispute be directed to be decided by the Reference Court itself, since the appellant was not a person interested in the award, was rejected by this Court, observing that the Reference Court does not have the power to enter into an application under Order 1, Rule 10, CPC.

20.(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court.

11. In view of above, neither in any reference petition filed U/s 18 of LA Act nor any reference petition filed U/s 30-31 of LA Act, any party or interested person can directly file the application to join the proceedings before the court. Accordingly, the application filed u/o 1 rule 10 CPC by applicant M/s. The Peerless General Finance and Investment Company Limited, being merit-less, is dismissed. Application stands disposed of.”

6. It is urged that the impugned order is plainly erroneous and unsustainable. Mr. Bhaskar P. Gupta, learned senior counsel urges that the intent of Section 30/31 is to provide a forum for those claiming entitlement to the amount determined as compensation on the basis of some pre-existing rights. It is contended that the decision relied upon i.e. *Shyamali Das v. Illa Chowdhry & Ors.* AIR 2007 SC 215 has to be read in the context of the circumstances of that case. Mr. Gupta, learned senior counsel highlights

that the claim by the applicant in that case was by one who sought to be impleaded in an ongoing reference proceedings after she had foregone her right to seek relief under Section 30/31. It was in that context that the Supreme Court observed that the third parties cannot participate, before the Reference Court, where the only issue to be decided is with respect to correctness of the quantum of compensation.

7. Counsel for the appropriate Government submitted that there is no error in appreciation of law i.e. Section 30/31 of the Act or of the judgment in *Shyamali Das* (supra). It was submitted that there is an express reference to Section 30/31 which clearly points out to the fact that the Court was alive to the various remedies to claimants and that recourse to such proceedings was not one such.

8. Section 30 and 31 of the Land Acquisition Act, 1894 read as follows:

***“30. Dispute as to apportionment.** – When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.*

***31. Payment of compensation or deposit of same in Court.** – (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.*

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of

the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

9. The decision in *Shyamali Das* (supra) was in the context of an award made by the Collector on 26.11.1998. The land owner had sought a reference under Section 18 of the Act soon thereafter. There were other references too. The third party claimant first approached the Calcutta High Court in a public interest litigation challenging the land acquisition and thereafter filed a suit claiming title over the property. During the pendency of those proceedings, the third party/applicant preferred two applications under Section 11/11A of the

Act and 5/5A objecting to the acquisition of property and then sought for impleadment, under Order 1 Rule 10 of the Code of Civil Procedure before the Reference Court. It was in these circumstances that the Calcutta High Court observed that having lost the opportunity to claim relief under Section 30/31, the applicant could not be allowed to participate in a reference proceeding which was confined to examining only the question of correctness of the compensation determined.

10. This Court is of the opinion that *Shyamali Das* (supra) is an authority that a third party, cannot seek impleadment in Section 18 proceedings. However, the very object and rationale of Section 30/31 is to facilitate a forum within the four corners of the Land Acquisition Act, 1894, to claimants who with pre-existing right, title or interest in respect of the lands or the right to receive compensation in some such capacity. In these circumstances, having regard to these objectives, it is apparent that the impugned order is based upon a fundamental misreading of the provision. It is, therefore, liable to be set aside. The order dated 29.02.2016 is accordingly set aside. The petitioner is directed to be impleaded under Section 30/31 read with Order 1 Rule 10 CPC in the proceedings pending before the Additional District & Sessions Judge and; the petitioner shall be further permitted to participate in the proceedings and claim its rights to amounts in accordance with law.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

SEPTEMBER 21, 2017/kks

SUNIL GAUR, J