**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 14244 OF 2016 IN FA/2058/2016

SUBHADRABAI BABRUWAN HAWALDAR
VERSUS
THE EXECUTIVE ENGINEER, LIFT IRRIGATION DIVISION, OSMANABAD UNDER G.M.I.D.C. AURA
...
Advocate for Applicant : Mr.R.R.Mantri h/f. Mr.Laxmikant C. Patil.
Advocate for Respondent No. 1 : Mr. B. R. Surwase.
AGP for Respondent No.2 : Ms. S. S. Raut.
Advocate for Respondents No.3A to 3G : Mr. V. D. Deshmukh.
...

**CORAM : P.R. BORA, J.**

**DATED : 27th AUGUST, 2018.**

**ORDER** :-

The applicant has filed present application seeking permission to intervene in First Appeal No. 2058 of 2016 and to implead her as a respondent in the said appeal.

2. It is the contention of the applicant that the land, which is the subject matter of the land acquisition proceedings involved in the present appeal, was originally owned by one Babu @ Babruwan Hawaldar. Applicant claims herself to be the first wife of said Babruwan. She did not have any issue out of said wedlock. Babruwan contracted second marriage with Sakharabai, who is respondent No.2 in the Regular Civil Appeal No. 1 of 2005. Babruwan died in the year 1988. After death of Babruwan, present applicant had preferred Regular Civil Suit No. 61 of 1995, seeking partition and separate possession against present

respondent No.3A Sakharbai and her children. The said civil suit was decreed and applicant was held entitled for 2/21$^{th}$ share in the property of deceased Babruwan.

3. Being dissatisfied with order passed by the learned Joint Civil Judge, Junior Division, Osmanabad, the plaintiff in the civil suit i.e. present applicant, as well as defendants No.3 to 8 in aforesaid civil suit (i.e. present respondent No.3A to 3G), preferred an appeal in the District Court.

4. The learned District Judge allowed the appeal filed by present applicant and enhanced her share in the property of deceased Babruwan to 1/3$^{rd}$ + 1/21$^{th}$.

5. The cross-objection preferred by Sakharbai was dismissed by the learned District Judge. Against the said Judgment and order rendered by learned District Judge, Second Appeal No. 669 of 2010 was preferred by respondent No.3. However, same has been dismissed by this Court.

6. The material on record further reveals that in the meanwhile, some part of the land, which was the subject matter in Regular Civil Suit No. 61 of 1995 and further proceedings arising out of the said proceedings, was acquired by the Government. The record further shows that, the Special Land Acquisition Officer (SLAO) had paid some amount of compensation to the present applicant.

7. The material on record further reveals that respondent No.3 Sakharbai preferred an application bearing Land Acquisition Reference No.235 of 2009 under Section 18 of the Land Acquisition Act, 1894, seeking enhancement in the amount of compensation as was awarded by SLAO. The present applicant was admittedly not party to the said reference application.

8. After reference application has been decided, the Acquiring Body has preferred the First Appeal No. 205 of 2016 before this Court. The material on record further reveals that respondent No.3 Sakharbai filed Special Darkhast No. 504 of 2004 before the Reference Court, seeking execution of the Award under Section 18 of the Land Acquisition Act, 1894. The material on record further reveals that in the said darkhast proceedings, an application was filed by present applicant for her impleadment as a co-decree holder in the said execution proceedings. The said application has been allowed and at present the present applicant is added as co-decree-holder in the Special Darkhast No. 504 of 2014 alongwith respondent No.3 and her children.

9. In the factual scenario, as above, it is the contention of the applicant that, she needs to be impleaded as party respondent in the First Appeal filed by the Acquiring Body against the Judgment and Award passed by the District Judge in Land Acquisition Reference No. 235 of 2009.

10. The request so made by the applicant is strongly resisted by respondent No.3. The learned counsel appearing for respondent No.3 submitted that there is no such provision in the Act to permit the applicant to intervene at the stage of First Appeal. The learned counsel submitted that the present applicant did not make any attempt to dispute the Award passed by the SLAO and the reference was made only by respondent No.3 and her children under Section 18 of the Land Acquisition Act, 1894 for enhancement of the compensation.

11. Relying on the Judgment delivered by learned Single Judge of this Court in the case of - ***Machindra s/o. Santaram Kutwad Versus Sharad s/o. Khanderao Survase and others [2012 (6) Mh. L. J. 688),*** the learned counsel submitted that the present applicant does not have any right to seek her impleadment as the respondent in the present first appeal.

12. The learned counsel also relied upon the another Judgment in the case of - ***Digambar s/o. Sambaji Pued Versus State of Maharashtra and others [2008(3) Mh.L.J. 256]***, and more particularly, paragraph No.5 of the said Judgment to urge that the procedure, prescribed under Sections 18 and 30 of the Land Acquisition Act, 1894, is inconsistent with the procedure prescribed under Order I, Rule 10 of the Civil Procedure Code. The learned counsel pointed out that in the case of ***Digambar***

***(supra)*,** one Satish, who was respondent No. 3 in the said petition, was not party to the Reference made to the Collector under Section 18 of the Act. Said Satish filed an application for impleading him as a party in the reference proceedings. The said application was objected by the petitioner Digambar. However, the Joint Civil Judge (Senior Division), Nanded, allowed the said application, observing that the said respondent had some interest in the property so acquired and it would be better to add him as a party without going into further merits of the matter. The aforesaid order was challenged by Digambar by filing a Writ Petition before this Court and the said Writ Petition was allowed by this Court with following observations -

> *"5. The aforementioned citations relied upon by the petitioner clarify the position in law. It is observed by the Apex Court that procedure prescribed under sections 18 and 30 of the Act is inconsistent with the procedure prescribed under Order 1, Rule 10 of Civil Procedure Code. It was further observed that making an application in writing under sub-section (1) and within the limitation prescribed under sub-section (2) of section 18 are conditions precedent for the Land Acquisition Officer to make a reference under section 18 and only on its receipt, under section 20, Civil Court gets jurisdiction to issue notice and thereafter to conduct enquiry as contemplated under the Act. It was observed that at this stage the procedure of trial etc. as contemplated under the Civil Procedure Code would apply and section 53 of the Act would become applicable.*
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> *6. In the light of the settled legal position, I am of the opinion that the view adopted by the trial Court is erroneous and, therefore, the impugned other needs to be quashed and set aside.*
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> 7. The petition stands allowed. The impugned order dated 19-7-2003 passed by Joint Civil Judge (Senior Division), Nanded in L.A.R.No.108 of 1998 is quashed and set aside."

13. The learned counsel submitted that the facts of the present case are quite similar to the facts which were involved in both the cases cited supra and as such, the application filed by the applicant deserves to be rejected.

14. The learned counsel further relied upon the Judgment of this Court in a case ***Shri Dattaram Deu Desai and others Versus Shri Nirakar Devasthan of Palolem through its Attorney and others [2000(2) Bom. C.R. 100],*** to canvass that, the person, who was not party to the acquisition proceedings, can not be impleaded as a party in subsequent proceedings arising out of the said acquisition.

15. Mr. Surawase, learned counsel for Acquiring Body adopted the arguments advanced by the learned counsel appearing for respondent No. 3 and submitted that in view of law laid down in the aforesaid Judgment by this Court, the application filed by the applicant deserves to be dismissed.

16. There cannot be a dispute as about the ratio laid down in the Judgments cited supra and relied upon by the learned counsel appearing for respondent No.3. However, the facts of the present case are distinguishable. It is not in dispute that the lands which were the subject matter in Regular Civil Suit No. 61 of 1995 are also the subject matter of the present first appeal. In the aforesaid lands, the share of applicant Subhadrabai is

finally determined to the extent of 1/3rd + 1/21st. It is, thus, evident that, in the present first appeal, there is no question of determining the share of applicant Subhadrabai. In the case of ***Machindra Versus Sharad*** (cited *supra*), the learned Single Judge has refused to implead the third party respondent at the appellate stage, observing that, the Court at the appellate stage cannot undertake an exercise of determining the share of the parties and that can only be done in application under Section 30 of the Land Acquisition Act, 1894, which can only be preferred in the Reference Court. In the present matter as has been noted by me here-in-above, the share of applicant Subhadrabai has already been determined by the competent Civil Court and the same has attained finality. Thus, there is no question of determining the share of applicant Subhadrabai in the present first appeal.

17. Moreover, as has come on record, applicant Subhadrabai has already been impleaded as co-decree-holder in the Special Darkhast No. 504 of 2014 before the Executing Court arising out of Award under Section 18 of the Land Acquisition Act passed by the Reference Court in L.A.R.No. 235 of 2009, in respect of lands involved in the present appeal. Applicant Subhadrabai is added as co-decree-holder in the aforesaid execution proceedings under order of the competent Civil Court and said order has also not been challenged by respondent No.3 or by Acquiring Body.

18. The present first appeal is filed against the Award / Decree passed in L.A.R.No. 235 of 2009. As noted here-in-above, applicant Subhadrabai is already impleaded as co-decree-holder in the execution proceedings arising out of the Award/Decree passed in L.A.R.No.235 of 2009. In these peculiar facts it appears to me that, applicant Subhadrabai is fully justified in seeking her impleadment in the present appeal as respondent, so that she can defend the Decree passed in her favour. In the result, the following order is passed.

**O R D E R**

1. It is directed that applicant Subhadrabai Babruwan Hawaldar shall be added as respondent No.4 in First Appeal No. 2058 of 2016.
2. Civil Application stands allowed and disposed of.

**[ P.R. BORA, J.]**

rrd.