

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2268 OF 2018

Mrs.Premalata Chandrakant Sancheti	...	Petitioner
V/s.		
Manikchand Jalamchand Tatiya & Ors.	...	Respondents

- Mr.Sachin Gite for the Petitioner.
- Mr.Gaurav Potnis for Respondent Nos.4(1) to 4(3) & 10.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondents.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 24th January, 2018, passed by the Ad-hoc District Judge-5, Pune, below the Application Exhibit-32 in Land Reference Darkhast No.434 of 2009.

3] The Application at Exhibit-32 was filed by the present Petitioner under Order-1 Rule-10 and Order-22 Rule-10 read with Section 151 of the Civil Procedure Code (*for short*, "C.P.C.") for her impleadment as a party to the execution proceeding on the ground that she is the purchaser of the acquired property.

4] The trial Court has, however, rejected the said application on the ground that she was not a party in the Land Acquisition Proceeding and even after issuance of “Notification” under Section 4 of the Land Acquisition Act, she has not taken any objection before the Land Acquisition Officer. She has also not filed any reference before the Collector against the Award in respect of the Land Acquisition passed by the Special Land Acquisition Officer and hence, considering all these facts and circumstances, the trial Court held that the provisions of Order-1 Rule-10 of C.P.C. cannot be invoked.

5] While challenging this order of the trial Court, the submission of learned counsel for the Petitioner is that the Petitioner is the bonafide purchaser of the suit property. She has purchased the same by virtue of the registered sale-deed dated 16th July, 1996, from the father of Respondent Nos.9(1) and 9(2). Thereafter, Respondent Nos.9(1) and 9(2) had also confirmed the said transaction by executing another registered sale-deed in the year 2007 and in such situation, she is having the right to be impleaded as party in the Land Reference Petition pending before the trial Court.

6] However, as rightly submitted by learned counsel for the Respondents, the very first sale-deed of the Petitioner, even from the

father of Respondent Nos.9(1) and 9(2) is dated 16th July, 1996, which is subsequent to the Notification issued under Section 4 of the Land Acquisition Act on 4th January, 1996 and in such situation, in view of the law laid down by the Hon'ble Supreme Court in the case of *Smt.Ambey Devi Vs. State of Bihar and another*, AIR 1996 SC 1513, and by this Court in the case of *Raghunath Dhondur Navde Vs. Pandit Ramchandra Navde & Others*, 1999(3) ALLMR 426, and also in the case of *Namdeo Rama Venupure Vs. Maharashtra Krishna Valley Development Corporation*, in Civil Application No.4123 of 2015 in First Appeal No.362 of 2010, dated 18th December 2015, such application for her impleadment as party cannot be tenable.

7] In the judgment of the Hon'ble Supreme Court in the case of *Smt.Ambey Devi (supra)*, the question raised for consideration was, “whether one of the co-sharers can claim enhancement of the compensation without seeking reference under Section 18 of the Land Acquisition Act, 1894, in a reference at the instance of other co-sharers?” While deciding this question, in paragraph No.(3) of the judgment, it was held by the Hon'ble Supreme Court that, “the scheme of the Land Acquisition Act is inconsistent with C.P.C. regarding the entitlement to claim compensation under the said Act”. It was further held that, “the C.P.C. provides only the procedural format to

adjudicate the dispute, whereas under the Land Acquisition Act, the jurisdiction of the Civil Court to determine higher compensation as laid down under Section 23 of the said Act, would arise only when a valid reference has been made under Section 18 of the Act within the prescribed limitation. Hence, the jurisdiction of the Court is founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimants". In the said case, as the Appellant has not made any application under Section 18 of the Act, it was held that, the question does not arise of entertaining her application for impleadment under Order-1 Rule-10 of C.P.C..

8] The similar view is taken by the Division Bench of this Court also, in the judgment of *Namdeo Rama Venupure (supra)*, wherein also, the Applicants were not party of the proceedings before the Reference Court as well as the First Appeal. Hence, it was held that as the Applicants did not seek a Reference under Section 18 of the Act and hence, they were not parties to the Reference, and as Section 18 of the Act provides the period of limitation for seeking a Reference, the Applicants are neither necessary nor proper parties to the proceedings in the Court.

9] In another judgment of this Court in the case of *Raghunath*

Dhondu Navde (supra) also, the Application was filed in the execution proceeding for impleadment and it was held that the only question for consideration is, whether a person who is not a party to the Reference made under Section 18 of the Land Acquisition Act can file an Application for apportionment of the enhancement of compensation in an execution proceeding pending before the Court? It was held that, the provisions of Order-1 Rule-10 of C.P.C. cannot be applicable in such situation; as the Petitioner was not party to the Land Acquisition Reference, he was not entitled to appear before the Civil Court.

10] In the instant case also, admittedly, the Petitioner was not a party to the Acquisition Proceeding. She has also not filed the Reference before the trial Court for enhancement of compensation. As a matter of fact, her sale-deed is also subsequent to the Notification issued under Section 4 of the Land Acquisition Act. Her name was also not entered into record of rights of the said land. In such situation, she has no right to be impleaded in the execution proceeding. The trial Court has thus rightly rejected her application for impleadment.

11] Writ Petition therefore being without merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]