

SMT JUSTICE T. RAJANI

CIVIL REVISION PETITION No.3155 OF 2018

ORDER:

This revision petition is filed, under Article 227 of the Constitution of India, against the order, dated 06.04.2018, passed in IA No.172 of 2017 in LAOP No.25 of 2008 by the court of Senior Civil Judge, Nirmal, by virtue of which the court dismissed the petition, filed by the petitioner seeking for his impleadment in LAOP No.25 of 2008.

2. The impugned petition was filed under Order I Rule 10 CPC r/w Section 151 CPC. The petitioner claims to be the son of the original pattadar of the land, which was acquired. According to the petition filed by the petitioner, his father died on 18.09.1998, leaving him as his legal heir. On 30.07.2008, he applied before the Tahsildar, Nirmal, for mutation of his name in the revenue records, by filing relevant documents. But later he came to know that the land was acquired by that date and an award was also passed on 30.06.2008. The lower court dismissed the petition, considering that order I Rule 10 CPC cannot be invoked by the petitioner, to get himself impleaded.

3. Assailing the said order, this revision is preferred on the grounds that the provisions of CPC are applicable to the proceedings before the Reference Court (i.e.,) the Court below, under the Land Acquisition Act, 1894 (for short, "the Act") vide section 53 of the Act. The court below has jurisdiction to entertain the petition under Order I Rule 10 CPC. The court

below should have seen that respondents 2 to 4, whose names are referred in the reference by the Revenue Divisional Officer, Land Acquisition Officer, Nirmal, have not filed any documents, registered or otherwise, to assert their ownership/title over the subject land. The revision petitioner's father did not sell the property to respondents 2 to 4 and therefore they could not file any document and yet their names have been referred to the reference court and the name of the revision petitioner was not referred during the life time of the revision petitioner's father, though his name appeared in the revenue record as pattadar and possessor. The Revenue Divisional Officer (Land Acquisition Officer), Nirmal should have considered the said fact.

4. On the above grounds, the revision petitioner seeks this Court to set aside the impugned order.

5. Heard the learned counsel appearing, for the petitioner and the learned counsel appearing, for the respondents.

6. The short question that is to be answered in this petition is whether the petitioner can seek for impleadment in the reference made by the land acquisition officer, by invoking Order I Rule 10 r/w Section 151 CPC.

In regard to the above question, in the foremost, the rulings relied upon by the counsel on either side can be looked into.

7. The counsel for petitioner relies on a ruling of a Full Bench of this court reported in REPAKA BHYRAVAMURTHY VS.

MUPPIDI VENKATARAJU (FB)¹, wherein the court considered Section 53 of the Land Acquisition Act whereunder the application of CPC is extended to the Act except so far as they may be inconsistent with anything contained in the Act. In the said ruling, this court distinguished cases falling under Sections 30 and 18 of the Act . The reference under Section 30 is limited to the cases in which Government is not directly interested, whereas Section 18 contains a definite provision for limitation. It was also observed that a person, who is not a party to the proceedings, can ask for a reference under Section 30, who may not be otherwise entitled to, in terms of Section 18, in the circumstances as held in some of the decisions of the Supreme Court. The observation with regard to the powers under Section 30 is that they are wide and they are conferred upon the Collector, to refer a dispute as regards the apportionment of amount of compensation or as to the persons to whom the same or any part thereof is payable. It was observed that the reference under the Land Acquisition Act is of two types viz., one is as regards the quantum of compensation and the other is as regards the entitlement or apportionment thereof. There is no quarrel on the said proposition. This court, with regard to the power of reference under Section 30 and Section 18, posed a question to itself whether in such situation, it can be said that a person, who did not appear before the Land Acquisition Officer has no *locus standi* to get himself impleaded as a party and answered by saying that the same must be rendered having

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AIR 2002 AP 77 (FB)

regard to the facts and circumstances of each case. It was further observed that a subsequent discovery or question of interest as regards the entitlement to receive the compensation or a part of it by reason of a subsequent event, may give rise to a situation where an application under Order I Rule 10 CPC, is maintainable. Hence, the ruling is to the effect that Order I Rule 10 CPC is applicable having regard to the facts of the case.

8. But the counsel for the respondents relies on a ruling of the Supreme Court reported in *Ram Prakash Agarwal and others vs. Gopi Krishan*², wherein it was held that a person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of 1894 Act, but cannot make an application for impleadment or apportionment before the Reference Court. The court also referred to its judgment in *PRAYAG UPNIVESH AWAS EVAM NIRMAN SAHKARI SAMITI LTD. V. ALLAHABAD VIKAS PRADHIKARAN*³ while arriving at the said finding. It was also held that inherent powers under Section 151 CPC can be exercised by the court to redress only such a grievance, for which no remedy is provided for under CPC. The language of Sections 18 and 30 was observed to be very specific, that on a written application given by the person interested to the Collector, the Collector shall refer the matter to the court.

9. Section 30 of the Act can be extracted for ready reference, which reads as follows:

² (2013)11 SCC 296

³ (2003) 5 SCC 561

“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.”

10. Hence, from the above provision, there can be no doubt that even a person, who claims that compensation ought to have been paid to him also has to make an application to the Collector and such dispute has to be referred only by the Collector to the Court.

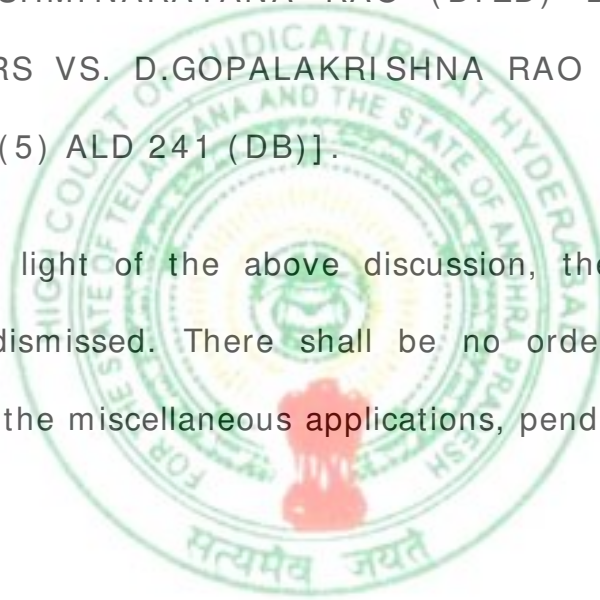
11. The other judgments relied upon by the parties need be considered as they are prior to the judgment of the Supreme Court cited above and they are not binding precedents. The said rulings are mentioned hereunder:

- 1) AMBEY DEVI vs. STATE OF BIHAR [AIR 1996 SC 1513].
- 2) U.P.AWAS EVAM VIKAS PARISHAD VS. GYAN DEVI (DEAD) BY LRS. AND OTHERS [(1995) 2 SCC 326]
- 3) M/ S. CYRUS INVESTMENT (P) LTD., VS. MOHD. FAREEDUDDIN KHAN AND OTHERS [AIR 1994 AP 199]
- 4) *PRAYAG UPNIVESH AWAS EVAM NIRMAN SAHKARI SAMITI LTD. V. ALLAHABAD VIKAS PRADHIKARAN [(2003) 5 SCC 561]*: This ruling is also to the effect that the reference under Sections 18 and 30 has to be made only by the Collector.

5) M/ S. NEYVELY LIGNITE CORPN. LTD. VS. SPECIAL TAHSILDAR (LAND ACQUISITION) [AIR 1995 SC 1004]: This ruling explains only the phrase “person interested”. There can be no doubt that the petitioner herein is a person interested, but the question is whether he can directly approach the court by way of petition under Order I Rule 10 CPC or whether he has to approach the Collector or make any application under Section 30 of the Land Acquisition Act.

6) D.LAKSHMINARAYANA RAO (DIED) BY LRS. AND OTHERS VS. D.GOPALAKRISHNA RAO AND OTHERS [2010(5) ALD 241 (DB)].

In the light of the above discussion, the civil revision petition is dismissed. There shall be no order as to costs. As a sequel, the miscellaneous applications, pending if any, shall stand closed.



T. RAJANI, J

October 10, 2018
LMV