

* THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1507 of 2014

%01.02.2018

Between:

Smt. Madhumathi

.. Petitioner

And

The Special Deputy Collector
Land Acquisition
Greater Hyderabad Municipal Corporation
6th Floor, Municipal Complex
Hyderabad, and others

.. Respondents

Counsel for the petitioner : Sri P.Panduranga Rao

Counsel for the respondents : Sri S.Subba Reddy

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? CITATIONS:

1. 2013 (9) SCC 438 = 2013 (4) ALD 178 SC
2. 2001 (5) ALD 815 (LB)
3. 2017 (1) ALD 74
4. AIR 2007 SC 215
5. AIR 2003 SC 2302
6. (2013) 11 SCC 296
7. (2006) 13 SCC 574
8. 2017 (4) HLT 201 (W.P.Nos.3094 & 196 of 2017)
9. (2002) 9 SCC 426

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1507 of 2014

ORDER:

The revision petitioner is petitioner No.1 by name Smt. Madhumathi, w/o. Sri Bikkilal in I.A.No.366 of 2014 in L.A.O.P.No.1880 of 2011(Section 30 reference) on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad. Said I.A.No.366 of 2014 was filed by four petitioners seeking to come on record as claimants 4 to 7 by showing the Special Deputy Collector, L.A. (G.H.M.C.) as respondent No.1 and P.Suresh Kumar, P.Munna Swamy and Sonydayal, claimants 1 to 3 of L.A.O.P.No.1880 of 2011 as respondents No.2 to 4. Their implead petition is with the averments that they are the joint owners of house bearing No.5-1-499 to 5-1-505 admeasuring 333.03 square yards situated at Putlibowli, Hyderabad, which they got under the registered Sale Deed bearing document No.1577/ 1976, that was purchased in the name of Madhumathi, Bikkilal and one Jayaram and Jayaram died later on 09.12.2003, leaving behind him his wife Pushpa Bai and son Amarnath. The Assistant City Planner, Circle No.VIII, GHMC, Town Planning Section, Hyderabad, vide letter, dated 11.07.2008, sent proposals to the District Collector, Hyderabad for acquisition of land for road widening and it was published in the local newspapers and in the Hyderabad District Gazette on 19.09.2008. The petitioners

received notices under Section 5A of the Land Acquisition Act, 1894 (for short, 'the LA Act') to submit their objections, which they have submitted. The petitioner No.1-Madhumathi supra filed W.P.No.4093 of 2006 before the High Court and it was disposed of on 30.03.2006 against the Municipal Commissioner, G.H.M.C. directing not to demolish the premises of petitioners without following due process of law under Sections 146&147 of the G.H.M.C. Act by way of private negotiation or by initiation of proceedings under LA Act. The District Collector on enquiry ruled out their objections. However, the respondents 3 to 5 (three claimants) only figured and not reflected all the names in the proceedings of the District Collector, dated 11.02.2009. Despite petitioners made representations, the Special Deputy Collector did not consider and behind their back the matter was referred to the Civil Court under Section 30 LA Act, as if only three claimants supra, even they have no title, but for the present proposed implead petitioners and as such they are necessary and proper parties to the pending Section 30 LA Act reference in L.A.O.P.No.1880 of 2011.

2. Respondent No.4-Sonydayal-claimant No.3, among the three claimants of said L.A.O.P. supra, in his counter contended that the proposed petitioners have no right over the petition schedule property. Said Madhumathi, Bikkilal and

Jayaram filed R.C.No.75/ 1979 against R.Satyanarayana, R.C.No.71/ 1979 against Shanti and company, R.C.Nos.72 & 73 of 1979 against Munna Swamy Naidu and R.C.No.74/ 1979 against the father of claimant No.3-Sonydayal and all the cases were ended in dismissal vide orders dated 31.01.1987 by the learned Rent Controller with a finding of they have no right over the property and there is no jural relationship of landlord and tenant between them and the Rent Control Appeals were also ended in dismissal. It is also averred that Madhumathi, Bikkilal and Jayaram even went unsuccessful in the revisions before the High Court in the rent control matter supra and all these facts show that they have no title over the property and therefore, they have no manner of claim much less to come on record by impleadment.

3. The impugned order of the lower Court in dismissing the implead petition on 03.03.2014, after hearing from the above pleadings is with the observation that the claim of the petitioners to come on record as proposed claimants 4 to 7 is based on registered Sale Deed, dated 20.05.1976, however, they went unsuccessful in the rent control matters in seeking eviction as referred in the counter of the claimants in L.A.O.P.No.1880 of 2011 and they did not refer in the implead petitions regarding the result of those rent control matters. In the present Section 30 LA Act reference L.A.O.P.No.1880 of

2011, they are not shown as co-claimants and except their say of they filed objections to Section 5A LA Act pre-enquiry notice, from which the order passed by the District Collector, dated 11.02.2009, there is no document filed and thereby the implead petition is dismissed.

4. In the course of hearing the Revision Petition, though no document filed before the lower Court, the proceedings of the District Collector, Hyderabad in No.C/ 923/ 08, dated 11.02.2009, which is a notice under Section 5A enquiry for the proposed acquisition including of D.No.5-1-499 to 505 of an extent of 246.21 square yards given and one Madhumathi, w/o. Bikkilal for the premises filed objection showing as the absolute owner of 333.03 square yards and filed W.P.No.4093 of 2006, that was disposed of on 02.03.2006 by not to demolish the premises without following due process of law in directing the G.H.M.C. and requested for payment of compensation as per the Government registration market value at not less than Rs.50,000/- or to provide alternative land at the same market value. The answer is the objections are over ruled and the value to be fixed as per the market value to be arrived. Form 10 notice in No.C/ 923/ 2008, dated 23.04.2011, issued to Smt. Madhumathi by the Special Deputy Collector, L.A., GHMC, Hyderabad, says the land has been acquired for the road widening as per the Gazette notification

and she should vacate and deliver possession with structures before 07.05.2011 to the Special UDRI. But for this, there is no more material before this Court, even considering this from what is referred about it in the lower Court, though not the document filed before the lower Court since filed. It is not even the case that the award finds place any name, to say only some referred and others not as, on perusal of the award, dated 31.01.2011, in No.C/ 923/ 2008, it only refers the door Nos.5-1-499 to 505 as serial No.22 as in Section 5A notification and it also shows fixing of compensation for the same as per the award abstract serial 4 of Rs.99,11,139/- at Rs.24,711/- per square yard land value for 253.41 square yards, 30% Solatium, 12% additional market value and the structure value mentioned as NIL in arriving the total. The fact remains that, even subsequent to the award the Form 9 notice, dated 23.04.2011, in No.C/ 923/ 2008 was issued under Section 12(2) of the LA Act by saying besides the land value supra after deduction of I.T. for the total amount of Rs.89,00,203/- the matter is referred to the Civil Court under Section 30 of the LA Act and the Form 9 notice is even addressed to Smt. Madhumathi and on the even date by Form 10 in asking to deliver possession.

5. From this, now coming to consider whether the proposed petitioners, in the reference under Section 30 of the LA Act, can be impleaded as co-claimants?

6. The Apex Court in *Ramji Gupta v. Gopi Krishan Agrawal*¹ observed that a person, who has not made an application before the Land Acquisition Officer for making a reference under Section 18 or 30 of the LA Act, cannot get himself impleaded directly before the reference Court, though the larger Bench expression of this Court earlier in *Repaka Bhyravamurthy v. Muppidi Venkataraju*² observed, particularly from paragraph No.6 onwards, that a person claiming compensation or apportionment is entitled to be impleaded as a party in the reference Court, though he fails to appear before the Land Acquisition Officer. As observed by this Court in the decision of *Bilquis Jahan Begum (died) per LRs. v. Mohd. Shahed*³ that though the larger Bench decision of this Court in *Repaka Bhyravamurthy* (supra 2) is not referred in the expression of the Apex Court in *Ramji Gupta* (supra 1), the expression of Apex Court is binding on this Court under Article 141 of the Constitution of India to follow the principle therein. The Apex Court in the case of *Shyamali Das v. Illa Chowdhary*⁴ observed that the Land Acquisition Act is a

¹ 2013 (9) SCC 438 = 2013 (4) ALD 178 SC

² 2001 (5) ALD 815 (LB)

³ 2017 (1) ALD 74

⁴ AIR 2007 SC 215

complete code in itself, which provides remedies not only to those whose lands acquired, but also to those who claimed awarded amount or any apportionment thereof and derives its jurisdiction from the order of reference to determine adequacy and otherwise of the amount of compensation paid under the award made by the Collector and however, it is not within his domain to entertain any application of *pro interesse suo* or in the nature thereof. In the case of *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran*⁵ it is observed that the reference Court got jurisdiction only if the matter is referred to it either under Section 18 or Section 30 of the LA Act by the Land Acquisition Officer and the Civil Court got jurisdiction and authority then to decide the objections referred to it. However, the reference Court cannot widen the scope of its jurisdiction or decide matters, which are not referred to it. It was ultimately held in *Ramji Gupta's case* (supra 1) in paragraph Nos.31 to 33 that the person, who is not made an application before the Land Acquisition Officer for making a reference under Section 18 or 30 of the LA Act cannot get himself impleaded directly before the reference Court; it summarized the legal issues involved in paragraph No.33, which reads as follows:

⁵ AIR 2003 SC 2302

(i) An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings.

(ii) 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 the CPC.

(iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court.

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit.

(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.

7. Thus, unless there is an application under Section 30 of the LA Act to decide the dispute as to entitlement, the question of impleadment by a stranger to the reference does not arise. In the case of *Ram Prakash Agarwal v. Gopi Krishan*⁶ referring to Sections 18, 30, 31 and 3(b) of the LA Act, it is observed that direct impleadment of or application for apportionment of compensation by a third-party (not a party in the Land Acquisition Act proceedings at any stage) is impermissible for the said third-party is not entitled to set aside the award made by the reference Court by seeking help of Order IX Rule 13 C.P.C r/w Section 151 C.P.C. including on any allegation of fraud on a party as discussed from fraud on

⁶ (2013) 11 SCC 296

Court, but for the appropriate remedy is by resorting to proceedings permissible under law by Civil Suit or the like. For that conclusion it refers the expressions (supra). In the case of P.K.Sreekantan v. P.Sreekumaran Nair⁷ it is observed that the jurisdiction of reference Court under Section 18 of the Act is different to jurisdiction under Section 30 of the Act, as the jurisdiction under Section 18 is confined to consideration of specific objection taken to Collector's award whereas the jurisdiction under Section 30 has trappings of a decision in a partition suit. It was observed further that there is no time-limit prescribed for seeking reference under Section 30 of the Act, but for to say it should be within a reasonable time depending upon the facts and circumstances and need of finality of proceedings.

8. From the above, coming to the facts back, the revision petitioner-Madhumathi, along with her husband Bikkilal-revision respondent No.5, filed W.P.No.4093 of 2006 against the GHMC Commissioner, for whose benefit the land is acquired, impugning the interference with the property and the said writ petition was disposed of directing the respondent therein not to demolish the petitioners' premises, but for through due process of law. Subsequently the said Madhumathi by enclosing the writ petition affidavit copy and

⁷ (2006) 13 SCC 574

the copy of registered Sale Deed, dated 20.05.1976, addressed a letter to the Assistant City Planner on 08.04.2006 and also on 18.04.2008 and also later submitted many representations. Though these representations not found place in the award, dated 31.01.2011, and for that matter in the award, but for the door numbers and the value names are not mentioned of any particular person as to entrusted or not and how so far as the door numbers 5-1-499 to 505 concerned, but for in other premises concerned of the acquisition covered by the award. In another recent expression of this Court in G.Veeraiah v. State of Telangana⁸, it was held referring to Ramji Gupta, Repaka Bhyravamurthy, Prayag Upnivesh, Shyamali Das (supra) and Ajjam Linganna v. Land Acquisition Officer⁹ that in respect of disputed title claimant has to approach the Civil Court for adjudication of title for entitlement of compensation whereas a reference is not made at all direction can be given to refer under Section 18 of the LA Act to the Civil Court for enhancement of compensation. In Veeraiah (supra) it is after disposal of Section 30 reference case by the Civil Court the writ petition is filed for impleadment by also challenging that reference without impleadment.

9. From the above, a perusal of the record now filed shows not only notice under Section 5A of the Act calling for

⁸ 2017 (4) HLT 201 (W.P.Nos.3094 & 196 of 2017)

⁹ (2002) 9 SCC 426

objections to the acquisition given, but also after passing of the award the revision petitioner Madhumathi was asked to handover the possession of property and was also informed on the self-same date 23.04.2011 under Section 12(2) of the LA Act in Form 9 notice of the award passed on 31.01.2011 and referred to the Civil Court under Section 30 of the LA Act.

10. A perusal of Section 12 reads that (1) such award shall be filed in the Collector's Office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. (2) The Collector shall give immediate notice of award to such of the persons interested as are not present personally or by their representatives when the award is made.

11. Once such is the case, from Section 12 of the LA Act, the notice has been given by the Collector after passing of the award to Smt. Madhumathi as one of the persons interested and even if not present personally or through the representative when the award is made, and when Section 30 of the LA Act says 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. Once such is the case, there is a notice to the revision petitioner-Madhumathi after passing of the award intimating about the award and fixing of compensation and referring of the matter under Section 30 of the Act to the Civil Court to answer the reference for the persons entitled to the compensation and asking for delivery of possession. Thus, any mistake in not mentioning her name in Section 30 reference specifically even no way bar for her impleadment in the application sought, but for to say so far as the others are concerned, who are the revision respondents 5, 6 & 7, their names not find place either in Section 5A enquiry or in Section 11 and 12 notices of the post award.

With the above observations, the Civil Revision Petition is allowed in part by setting aside the dismissal order of the lower Court in I.A.No.366 of 2014 in L.A.O.P.No.1880 of 2011 with a direction to the lower Court to implead the said Madhumathi only as claimant No.4. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

01.02.2018
MVA

Note: L.R. Copy to be marked

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