

The Hon'ble Sri Justice V. RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

+ L.A.A.S. No.73 OF 2016

%Date:12.02.2018

Between:

Nukala Sathaiah S/o.Late Bikshapaiah @ Buchaiah
Aged about 68 years, R/o.Opp. Police Quarters,
Manchal Road, Ibrahimpatnam Village and Mandal,
Ranga Reddy District.

...Appellant

Vs.

\$ The Revenue Divisional Officer-cum-Land Acquisition
Officer, East Division, Ranga Reddy District and others.

... Respondents

! Counsel for Appellant : Sri K. Muralidhar Reddy

^ Counsel for Respondents 2 to 4 : Sri M. Praveen Kumar
Counsel for Respondent No.5 : Sri K. Rama Krishna
Counsel for Respondents 6 & 7 : Sri P. Chandra Shekar

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> Head Note :

?Cases Referred : Nil



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

L.A.A.S. No.73 OF 2016

JUDGMENT: (per V. Ramasubramanian, J)

Aggrieved by the judgment of the reference Court under Section 30 of the Land Acquisition Act 1894 (for short 'the Act'), directing the Award amount to be kept undisbursed, till the disposal of a suit for partition, the 1st defendant in the suit for partition has come up with the above regular appeal under Section 54 of the Act.

2. Heard Mr. K. Muralidhar Reddy, learned counsel for the appellant, Mr. M. Praveen Kumar, learned counsel for the respondents 2 to 4, Mr.K. Ramakrishna, learned counsel for the 5th respondent and Mr.P. Chandra Shekar, learned counsel for the respondents 6 and 7.

3. A land of an extent of Acs.600 in Ibrahimpattam Bhagayath Village was acquired under the emergency provisions, on a requisition made by the Director General, National Security Guards, New Delhi. A major portion of the acquired land comprised of an extent of Acs.5.00 in survey No.58/ 2.

4. This land was admittedly granted by way of assignment by the A.P. Bhoodhan Yagna Board, by its proceedings dated 02.01.1980, in favour of the appellant herein. But, the payment of compensation for the said land to the appellant herein was opposed by his brothers and sisters, who are respondents 2 to 7 herein, on the short ground that in a suit for partition filed by them in O.S. No.189 of 2010 on the file of the District Court, Ranga Reddy District, the very same property was shown as 'A' schedule property.

5. In view of the stand so taken by the respondents 2 to 7, the Land Acquisition Officer referred the matter under Section 30 of the Act to the Principal District Court, Ranga Reddy District. The reference Court, after finding that a suit for partition was indeed pending, passed a judgment holding that pending disposal of the suit for partition, the award amount cannot be disbursed among the claimants. Aggrieved by the said judgment, the 1st defendant in the suit for partition, has come up with the above appeal.

6. Under normal circumstances, the judgment of the reference Court cannot be taken exception to. If the property acquired by the Government for public purposes, belonged to a joint family, or if one of the members of the family had taken recourse to civil proceedings, on the ground that the property was joint family property liable to partition, the reference Court is bound to pass only the judgment that it has passed in the present case.

7. But, the case on hand appears to be one out of the routine. The very pleading of the respondents 2 to 4 herein, who were the plaintiffs in O.S No.189 of 2010, would show that there was no necessity for the reference Court to make the appellant herein wait for the conclusion of the civil suit for partition. This can be appreciated much better if a look at the first part of the paragraph 2.1 of the plaint in O.S No.189 of 2010 is taken. It reads as follows:

“The above named plaintiff humbly submits as follows:

That originally the plaintiffs and defendants father late Nukala Bikshapaiah @ Buchaiah has acquired several properties and after his demise in the year 1983 the plaintiffs and defendants are jointly holding the properties i.e. 1) Agricultural land admeasuring Ac.5-00 guntas in Sy.No.58, situated at Ibrahimpatnam (Bagath) Village, Ibrahimpatnam Mandal, R.R. District (hereinafter called as “A” Schedule Property) which land was originally acquired by late Nukala Buchaiah in the name of the defendant No.1 herein as he is the eldest son and apart from that the

plaintiffs and defendants are holding AC.1-13 guntas in Sy.No.942 of Ibrahimpatnam (bagath) village, R.R. District (herein after called as “B” Schedule Property) and a house property bearing H.No.2-52 (New) and 2-32 (Old), with a built up area of 2,000 Sft with AOC Madras terras, admeasuring 1000 Sq.Yards (herein after called as “C” Schedule Property) situated at Ibrahimpatnam (Khalsa) Village, Ibrahimpatnam Mandal, R.R. District, which stands in the name of the Plaintiffs and defendants father late Nukala Bikshapathi @ Buchaiah, apart from that the plaintiffs and defendants father has also acquired land in Sy.No.991, admeasuring Ac.1-20 guntas of Ibrahimpatnam (Bagath) Village, R.R. District and during 2004 when the said land was acquired by the Govt. All the plaintiffs and defendants have jointly distributed the compensation amount among themselves though the property stood in the name of Plaintiff No.1.”

8. As we have pointed out earlier, we are concerned in this case only with the land of an extent of Acs.5.00 guntas in Sy.No.58 in Ibrahimpatnam (Bhagath) Village, Ranga Reddy District, which was included as Schedule ‘A’ in O.S. No.189 of 2010. According to respondents 2 to 4, who are the plaintiffs in the suit, this property was acquired by their father late Nukala Butchaiah in the name of the appellant herein (1st defendant), as he was the eldest son.

9. But, such a pleading was completely contrary to the public policy, as no land can be acquired by any individual in the name of somebody else even if it be the eldest son, from the Bhoodhan Yagna Board. The object of creation of Bhoodhan Yagna Board, which was founded by Acharya Vinobha Bave, was to make persons holding huge extents of land to contribute their excess holdings for a public purpose and to distribute the same among the landless. Bhoodhan Yagna was not started by Acharya Vinobha Bhave for the purpose of enriching people and for the purpose of ensuring that the head of the family acquires lands in favour of his different sons. If that was the pleading in a suit for partition, that pleading strikes at the very root of the public purpose for which land was offered to Acharya Vinobha Bhave.

10. The reference Court has not taken note of the above aspect, while putting on hold the disbursement of compensation. It would have been a different matter if the pleadings in the partition suit had proceeded on the footing as though after the assignment of the land by Bhoodhan Yagna Board, the appellant brought the property into the common hotch pot and with the joint efforts of brothers and sisters, the property was developed. That was not the pleading in the plaint. The positive case of the respondents 2 to 4 in the suit for partition was that the father acquired the land in the name of the eldest son. This was sufficient for the reference Court to take note of the fallacy in the claim at least insofar as the suit schedule 'A' property was concerned.

11. Therefore, we are of the considered view that in the light of the very pleading of the respondents in the suit for partition, it is not a fit case for putting on hold the disbursement of compensation.

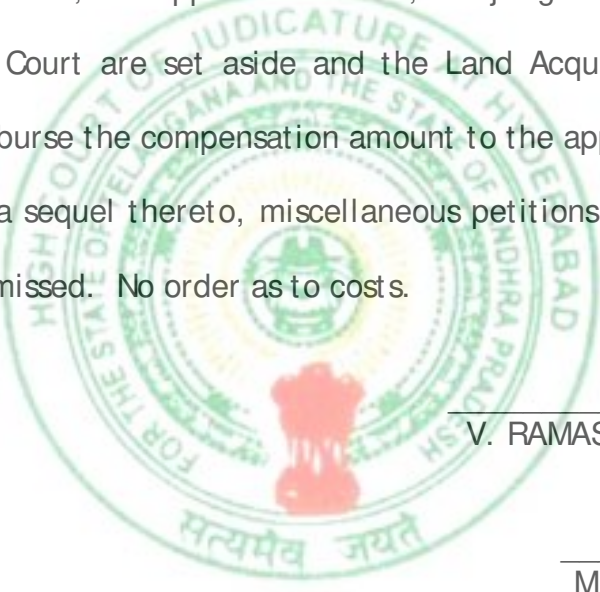
12. The learned counsel appearing for the respondents submitted that the appellant himself has given an undertaking before the trial Court to pay the share of the respondents, in the event of the suit for partition being decreed and that the same was also taken note of by the Court below in paragraph-10 of the impugned judgment. Therefore, it is contended that the appellant cannot go back on the undertaking.

13. The above argument tantamounts to putting the cart before horse. In the written arguments submitted before the Court below, the appellant undertook to pay the share in the compensation amount to the respondents, along with interest, in the event of the suit for partition being decreed. This undertaking can be enforced only if two things happen, namely, (1) the compensation is paid to the appellant, and (b) the suit for partition is decreed. Without both events taking place, the enforcement of the undertaking does not arise.

14. The learned counsel for the respondents submitted that if the appellant takes away the entire compensation amount, there is no way the respondents could take their share in the event of a success in the suit for partition. But, these fears are unfounded. There are two other items of properties in the suit for partition. The second item of property is also a land in Ibrahimpatnam village and the third item of property is a house in the same village. In the event of the respondents succeeding in the suit for partition, the appellant can always be deprived of a share in plaint 'B' and 'C' schedule properties.

15. Therefore, the appeal is allowed, the judgment and decree of the reference Court are set aside and the Land Acquisition Officer is directed to disburse the compensation amount to the appellant.

16. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

February 12, 2018
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