

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3769 OF 2019**

Mahavir Kallappa Dhulasawant
Age : 56 years, Occu. Agriculturist
R/o. Tamdalge, Tal. Shirol,
Dist. Kolhapur

...Petitioner

Versus

1. Ld. District Collector of Kolhapur
2. Appaso Tatoba Patil
Age : Adult, Occu. Agriculturist
R/o. Tamdalge, Tal. Shirol,
Dist. Kohapur.

...Respondents

Mr. Manoj A. Patil, for the Petitioner.
Mr. P. P. Poojari, AGP for the State/Respondent no.1.
Mr. Vijay Killedar, for Respondent no.2.

**CORAM: N. J. JAMADAR, J.
RESERVED ON: 19th SEPTEMBER, 2019
PRONOUNCED ON: 14th OCTOBER, 2019**

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.
2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of the order dated 5th September, 2018, passed by the Reference Court (Civil Judge, Senior Division, Jaysingpur) in Land Reference No.56 of 2016, whereby the Reference Court rejected the application preferred by the petitioner to stay the proceedings of the reference till the decision of Regular Civil Suit No.190 of 2016, instituted by the

petitioner, under Section 10 of the Code of Civil Procedure, 1908 (“the Code”).

3. The background facts leading to the petition can be stated in brief as under:

(a) The petitioner asserts that he and other co-sharers have $\frac{1}{2}$ share in the agricultural land bearing Revenue Survey no.3, Gat no.156, admeasuring 1H. 86Are situated at Mauje Tamdalge, Taluka Shirol, District Kolhapur (hereinafter referred to as ‘the suit land’). An area admeasuring 0.03.10Are out of the suit land has been acquired by the Government for four-laning of Shirol – Hatkanangale – Jaisingpur - Ankali State Highway no.3. An award under Section 11 of the Land Acquisition Act, 1894 (“the Act”, for short), was passed on 6th January, 2016. Compensation was determined thereunder. As the dispute arose between the petitioner and respondent no.2 over the entitlement to the compensation, respondent no.1 made a reference to the Court under Section 30 of the Act, by order dated 27th June, 2016. The reference came to be registered on 9th August, 2016. The petitioner was impleaded as non-applicant no.1 and respondent no.2 herein was impleaded as non-applicant no.2 therein.

(b) On 22nd August, 2016, the petitioner and three others instituted a suit for partition against respondent no.2 and seven others. The plaintiffs, *inter alia*, claimed partition and separate possession of ½ share in the suit land. The petitioner – non-applicant no.1 thus filed an application purported to be under Section 10 and Section 151 of the Code before the Reference Court and prayed that the proceedings of the land reference be stayed till the decision in Regular Civil Suit No.190 of 2016, on the ground that the suit land has yet not been partitioned by metes and bounds and thus the entitlement to a definite portion of the suit land has not been adjudicated. Therefore, till the question of entitlement of the parties to a specific portion of the suit land, including the acquired land, is adjudicated in the partition suit it would be expedient in the interest of justice to stay the proceedings of the land reference.

(c) Respondent no.2 – non-applicant no.2 resisted the application. The claim of the petitioner that the suit land has not been partitioned was stated to be incorrect and *mala fide*. The petitioner has instituted Regular Civil Suit No.190 of 2016 with an oblique motive to deprive respondent no.2 of the legitimate compensation. There is no justifiable reason to stay the proceedings of the land reference.

(d) The Reference Court, by the impugned order, was persuaded to reject the application on two counts. One, the land reference was, in fact, instituted prior in point of time and, therefore, the suit instituted by the petitioner cannot be said to be a previously instituted suit and thus Section 10 of the Act does not govern the situation at hand. And two, on merits, the Reference Court found that in a previous suit instituted by the petitioner a stand was taken that the partition has already been effected in respect of the suit land.

(e) Being aggrieved by and dissatisfied with the impugned order, the petitioner has invoked the writ jurisdiction of this Court.

4. Heard Mr. Patil, the learned Counsel for the petitioner and Mr. Poojari, the learned AGP for the State and Mr. Killedar, the learned Counsel for respondent no.2, at some length. Perused the material on record including the order impugned herein.

5. The learned Counsel for the petitioner would urge that in the backdrop of the issue of entitlement to the acquired portion of suit land, which directly and substantially arises in the land reference, and which is also the subject matter of the comprehensive suit for partition, the Reference Court could not have rejected the prayer of the petitioner to stay the proceedings

of the land reference till the suit for partition is adjudicated by the Civil Court. An endeavour was made to impress upon the Court that the stay of the land reference was imperative for avoiding the conflicting pronouncements in the land reference and the suit for partition. No prejudice whatsoever was likely to be caused to respondent no.2 by staying the proceedings of the land reference. In the alternative, it was submitted that both the suit and land reference be directed to be heard and decided by one of the same Court simultaneously. To lend support to this submission, reliance was placed on a judgment of the Division Bench of Orissa High Court in the case of *Bighnaraj Sai vs. Special Land Acquisition Officer*¹, wherein the Orissa High Court had directed that the reference to be made under Section 30 of the Act shall be heard along with the suit for partition by the Competent Court, one after the other.

6. In contrast to this, the learned Counsel for respondent no.2 submitted that the Reference Court was well within its right in rejecting the application for stay of the reference as the application was thoroughly misconceived. The prime condition of the pendency of the previously instituted suit has not been fulfilled and therefore the resort to the provisions contained in Section 10 of the Code was not warranted. The institution of

¹ 2007 (OLR) 44.

Regular Civil Suit No. 5 of 1994, subsequent to the reference under Section 30 of the Act, by the petitioner and others for partition was in direct conflict with the stand of the petitioner that there has already been partition of the suit land, in a previous suit instituted in the year 1994. In this view of the matter, no interference is warranted in the impugned order, in exercise of the writ jurisdiction, urged the learned Counsel for respondent no.2.

7. To begin with, it may be apposite to note few undisputed facts. The award in respect of acquisition of 0.03.10Are land under Section 11 of the Act was passed by the Land Acquisition Officer on 6th January, 2016. In the wake of the dispute as regards the entitlement to the compensation, the Land Acquisition Collector by order dated 27th June, 2016, proposed a reference to the Court under Section 30 of the Act. The reference, being Land Reference no.56 of 2016, was thus made on 9th August, 2016 impleading the petitioner and respondent no.2 herein as non-applicants thereto. The petitioner along with three others have instituted suit against respondent no.2 and 7 others for partition and separate possession of the suit land bearing Gat No.156 admeasuring 1H. 86Are. Evidently, a relatively minuscule portion of the suit land has been acquired

by the Government for four-laning of the State highway.

8. In the backdrop of the aforesaid incontestible facts, if the provisions of Section 10 of the Code are considered, it becomes evident that Section 10 incorporates an interdict against proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in previously instituted suit. Indisputably, the land reference, stay of which was sought by invoking the provisions contained in Section 10 of the Code was, in fact, registered prior in point of time. Conversely, Regular Civil Suit No.190 of 2016 came to be instituted subsequent to the reference in question. Thus, the said suit does not satisfy the description of being a previous suit so as to warrant the stay of the proceedings of the land reference. The Reference Court was thus justified in not acceding to the prayer for stay of land reference for the reason that Regular Civil Suit No.190 of 2016 was not a previously instituted suit. No fault can be found with the said reasoning of the Reference Court.

9. Secondly, Section 10 of the Code refers to stay of a “suit”. Strictly construed it does not envisage stay of the proceedings which do not qualify as suits, though instituted before a Civil Court. If the proceeding, the stay of which is sought, operates in

a different sphere than the previously instituted suit, the recourse to Section 10 may not be justifiable.

10. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *National Institute of Mental health & Neuro Sciences vs. C. Parameshwara*², wherein the object underlying Section 10 was expounded and its inapplicability to a proceeding before the forums which have the trappings of the Civil Court was indicated. In the said case, an employee was removed by the appellant therein post a disciplinary proceedings in which the respondent - employee was found guilty of the charge of misappropriation of drugs. The employee challenged the order of removal before the Labour Court, which passed an award setting aside the order of removal. The appellant instituted a writ petition challenging the said order of the Labour Court. Simultaneously, the appellant instituted a suit for recovery of the loss suffered by it due to the misconduct of the respondent. The respondent had sought the stay of the suit till the decision of the writ petition preferred by the appellant. The Civil Court rejected the said application. However, the High Court had stayed the civil suit under Section 10 read with Section 151 of the Code. The Supreme Court

² AIR 2005 Supreme Court 242.

allowed the appeal preferred by the appellant observing as follows:

“8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical.”

(emphasis supplied)

11. In the backdrop of aforesaid exposition of law, reverting to the facts of the case, a Reference Court under Section 30 of the Act exercises a special jurisdiction to determine the question of entitlement to, and apportionment of, compensation. Undoubtedly, the Reference Court determines the question of title and interest of the parties to the compensation to the extent necessary for the determination of the reference under Section 30 of the Act. However, the proceedings before the Reference

Court do not thereby take the character of a comprehensive title suit for all intent and purpose.

12. In the facts of the instant case, the institution of the suit for partition, after the reference, can not be said to be insignificant or inconsequential, especially when, in the previous suit bearing Regular Civil Suit No.5 of 1994, the petitioner herein had made a categorical averment that there was partition in respect of the suit land between the predecessor in title of the petitioner and respondent no.2 and his predecessor in title. This assertion, *prima facie*, constitutes an estoppel by pleading. The petitioner, therefore, cannot be permitted to take advantage of the mere institution of Regular Civil Suit No.190 of 2016, so as to stall the proceedings of the land reference.

13. A reference in this context to the judgment of the Supreme Court in the case of *Pukhraj D. Jain and others vs. G. Gopalkrishna*,³ may be useful. The Supreme Court, in the said case, observed that Section 10 of the Code indicates merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the Court as to how the proceedings should be conducted. It is for the court to decide what will be the best course to be adopted for

³ AIR 2004 Supreme Court 3504.

expeditious disposal of the case. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of the proceedings and harassment of parties. However, where subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the Court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side.

14. The reliance placed by the learned Counsel for the petitioner on the judgment of the Division Bench in the case of *Bighnaraj Sai* (supra) does not advance the cause of the submission on behalf of the petitioner. In the said case, the very application of the person claiming an interest in the acquired land for making a reference to the Court under Section 30 of the Act was rejected by the Special Land Acquisition Officer. The Court noted that a suit for partition was pending between the parties. In that backdrop, the Special Land Acquisition Collector was directed to make a reference under Section 30 of the Act for adjudication of the claim of the petitioner, and to take care of the contingencies, in the peculiar facts of the case, the Orissa High Court has passed following operative directions:

“15..... We further direct that such reference under section 30 shall be made by the opp. party No.1 within a period of two weeks from the date of production of the certified copy of

this judgment before, him. By the time the reference under Section 30 of the Act reaches the referral Court, if the partition suit between the parties being Civil Suit No.81 of 2005 remains pending, the reference under Section 30 of the Act shall be heard along with (one after the other) the said suit for partition by the competent Court. It is needless to mention that in the event the awarded amount has already been disbursed, the claim of the petitioner shall abide by the result of partition suit and the reference made under Section 30 of the Act.”

15. The aforesaid judgment and direction cannot be construed as an authority for the proposition that whenever reference under Section 30 of the Act and a partition suit in respect of the acquired property are pending, they ought to be decided by the same Court simultaneously. It may be practicable and expedient to adopt such a course of action where the circumstances of the case so warrant. The facts of the instant case, adverted to above, however, do not justify such a course.

16. The upshot of the aforesaid consideration is that the impugned order does not warrant any interference in exercise of the extra-ordinary jurisdiction of this Court. The petition, therefore, deserves to be dismissed.

17. Resultantly, the petition stands dismissed. No costs.

Rule discharged.

[N. J. JAMADAR, J.]