

\$~A-7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 18.09.2019

+ W.P.(C) 11028/2016 & CM APPL. No.43092/2016

CEPCO INDUSTRIES PVT. LTD. Petitioner
Through Mr.Jai Sahai Endlaw, Adv.

versus

UNION OF INDIA & ORS Respondents
Through Mr.Anurag Pratap, Adv. for R-2.
Mr.B.S.Banthia, Adv. for R-3, 4, 6, 8,
11, 13, 16, 19 & 20(i).

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed by the petitioner seeking to impugn the order dated 02.06.2016 passed by the learned Additional District Judge (02), New Delhi District, Patiala House Courts, New Delhi in CS 09/2015, titled, 'Union of India v. Nirmal Towers' whereby an application filed by the petitioner under Order 1 Rule 10 CPC seeking a reference in the proceedings under sections 30/31 of the Land Acquisition Act, 1894 (*hereinafter referred to as the 'LA Act'*) was dismissed.

2. The case of the petitioner is that they are the owner of the property at 26, Barakhambha Road, New Delhi which was acquired for the purpose of Barakhambha Metro Station. It is claimed that the petitioner was unaware of the said proceedings. After only passing of the award by the Land

Acquisition Collector (*in short 'LAC'*), the petitioner approached the LAC with an application to make a reference in the proceedings under sections 30/31 of the LA Act. However, the LAC dismissed the said application on 21.09.2006 on the ground of delay in filing the same as well as the LAC had already passed the award and is now *functus officio*.

3. As reference has already been made by the LAC to the District Judge on 14.09.2004 under sections 30/31 of the LA Act for adjudication, the applicant moved an application under Order 1 Rule 10 CPC before the learned Additional District Judge (*in short the 'ADJ'*) for being impleaded as party. This application was also dismissed by the learned ADJ on 02.06.2016. Hence, this writ petition where both the orders, namely, 21.09.2006 and 02.06.2016 have been challenged.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner relies upon judgment of the Division Bench of this court in the case of ***The Peerless General Finance & Investment Company Ltd. v. Union of India & Ors.***, MANU/DE/3008/2017 to contend that where the claimant claims pre-existing right, title or interest, he will be entitled to move an application under Order 1 Rule 10 CPC. Hence, it is prayed that the impugned order be *set aside*.

6. Learned counsel for respondent No.2 has made the following submissions:

i) He firstly states that the petitioner has no title to the property whatsoever. He relies upon the sale deed executed on 30.03.1970 regarding the property in question where it is categorically stated that the property has been bought for and on behalf of respondent No.2 who is a subsidiary of the petitioner herein. It is pleaded that this document, clearly conveys a title in

favour of respondent No.2.

ii) He relies upon the judgment of the Supreme Court in the case of *Ambey Devi v. State of Bihar & Anr.*, (1996) 9 SCC 84 and *Illa Roy Chowdhury v. Shyamali Das & Ors.*, (2008) 14 SCC 790 to contend that an application under Order 1 Rule 10 CPC does not lie before the learned District Judge where the proceedings under sections 30/31 of the LAC Act are pending.

7. Learned counsel appearing for some of the flat owners, i.e. respondents No.3, 4, 6, 8, 11, 13, 16, 19 and 20(i) states that limited to the question of impleadment they have no objection without prejudice to the rights and contentions of the parties.

8. I may first look at sections 18, 30 and 31 of the Land Acquisition Act, 1894, which read as follows:

“18. Reference to court

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made.:-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of

the notice from the Collector under section 12, sub-section (2); or, within six months from the date of the Collector's award, whichever period shall first expire.

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.

31. Payment of compensation or deposit of same in court:

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall effect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

9. The Division Bench of this court in ***The Peerless General Finance & Investment Company Ltd. v. Union of India & Ors.***(supra), held as follows:

“9. The decision in Shyamali Das (AIR 2007 SC 215) was in the context of an award made by the Collector on 26.11.1998. The land owner had sought a reference under Section 18 of the Act soon thereafter. There were other references too. The third party claimant first approached the Calcutta High Court in a public interest litigation challenging the land acquisition and thereafter filed a suit claiming title over the property. During the pendency of those proceedings, the third party/applicant preferred two applications under Section 11/11A of the Act and 5/5A objecting to the acquisition of property and then sought for impleadment, under Order 1 Rule 10 of the Code of Civil Procedure before the Reference Court. It was in these circumstances that the Calcutta High Court observed that having lost the opportunity to claim relief under Section 30/31, the applicant could not be allowed to participate in a reference proceeding which was confined to examining only the question of correctness of the compensation determined.

10. This Court is of the opinion that Shyamali Das (supra) is an authority that a third party, cannot seek impleadment in Section 18 proceedings. However, the very object and rationale of

Section 30/31 is to facilitate a forum within the four corners of the Land Acquisition Act, 1894, to claimants who with pre-existing right, title or interest in respect of the lands or the right to receive compensation in some such capacity. In these circumstances, having regard to these objectives, it is apparent that the impugned order is based upon a fundamental misreading of the provision. It is, therefore, liable to be set aside. The order dated 29.02.2016 is accordingly set aside. The petitioner is directed to be impleaded under Section 30/31 read with Order 1 Rule 10 CPC in the proceedings pending before the Additional District & Sessions Judge and; the petitioner shall be further permitted to participate in the proceedings and claim its rights to amounts in accordance with law.”

10. Clearly, in terms of the above the judgment, where proceedings are pending under sections 30/31 of the LA Act, the parties have a right to move an application under Order 1 Rule 10 CPC before the concerned Additional District Judge.

11. Learned counsel for respondent No.2 has strenuously relied upon the judgment of the Supreme Court in the case of *Shyamali Das vs. Illa Chowdhry & Ors.*, (2006) 12 SCC 300 and *Ajjam Linganna & Ors. vs. Land Acquisition Officer, Revenue Divisional Officer, Nizamabad and Ors.*, (2002) 9 SCC 426 to contend that no application under Order 1 Rule 10 CPC can be filed in a proceeding pending under Section 30/31 of the Land Acquisition Act.

12. I may note that the Division Bench of this court in the case of *The Peerless General Finance & Investment Company Ltd. v. Union of India & Ors.*(supra) has noted that the aforesaid judgment of *Shyamali Das vs. Illa Chowdhry & Ors.* (supra) is applicable to proceedings pending under Section 18 of the LA Act and not to proceedings pending under Section

30/31 of the LA Act.

13. I may note that the Supreme Court in the said judgment *Shyamali Das vs. Illa Chowdhry & Ors.* (supra) held as follows:-

“20. The learned Reference Judge, therefore, was entirely correct in passing its order dated 22.6.2004. A finding of fact was arrived at therein that the appellant was not a party interested in the proceeding within the meaning of Section 3(b) of the Act. The said order attained finality. It could not have, thus, been reopened. Another application for impleadment, therefore, was not maintainable. It may be true that in the proceeding of a suit, the court can in a changed situation entertain a second application under Order I, Rule 10(2) of the Code of Civil Procedure. But, the learned Reference Judge having opined, while passing its order dated 26.2.2004, that the appellant was not a person interested, in our opinion, a second application despite the subsequent event was not maintainable.

21. It is one thing to say that a proceeding under Sections 30 and 31 of the Act was maintainable at the instance of the appellant. She was given an opportunity to file the same by the Calcutta High Court in terms of its order dated 22.09.2000. She did not avail the said opportunity. Having not availed the opportunity, in our opinion, she was not entitled to be impleaded as a party.”

14. In the above case, the court was dealing with a case where a reference under Section 18 of the LA Act was pending.

15. Similarly, in the case of *Ajjam Linganna & Ors. vs. Land Acquisition Officer, Revenue Divisional Officer, Nisamabad and Ors.*, (supra), the court held as follows:-

“4. In our view, it was not open to the appellants (other than Ajjam Linganna) to have applied directly to the reference Court for impleadment and to seek enhancement under Section 18 for compensation. The only person for whom some consideration

can be shown is Ajjam Linganna who had atleast filed an application on 14-9-93 before Land Acquisition Officer seeking reference.”

16. Again, this was a matter where impleadment was sought in a matter pending under Section 18 of the LA Act.

17. Keeping in view the dicta of the Division Bench of this court in the aforementioned case of *The Peerless General Finance & Investment Company Ltd. v. Union of India & Ors.*(supra), it would be clear that the present application under Order 1 Rule 10 CPC would lie in the said proceedings under Sections 30/31 of the LA Act.

18. Accordingly, the writ petition is allowed. The impugned order dated 02.06.2016 is quashed. The application filed by the petitioner under Order 1 Rule 10 CPC is allowed.

19. I may note that I have not gone into the submissions raised by learned counsel for respondent No.2 regarding the title of the petitioner. These are the issues which would have to be adjudicated upon by the concerned court. Parties are free to raise all the issues before the concerned court.

JAYANT NATH, J.

SEPTEMBER 18, 2019/v

Corrected and released
on 04.11.2019