

HIGH COURT OF CHHATTISGARH, BILASPUR**• WPC No. 2508 of 2007**

1. Krishna Lal Patel (Died) Through Legal Heirs Nill
 - 1.1 - A. Gourishankar Patel S/o Late Shri Krishna Lal Patel Aged About 40 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
 - 1.2 - B. Nageshwari D/o Late Shri Krishna Lal Patel Aged About 38 Years R/o Village Bhedikona, Tehsil Dabhra, District Janjgir Champa Chhattisgarh
 - 1.3 - C. Padumkunwer Wd/o Late Shri Krishna Lal Patel Aged About 65 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
2. Ramesh Lal Patel (Died) Through Legal Heir Nill
3. Harishankar Patel S/o K.L. Patel Aged About 42 Years R/o Village Bhedikona , District Janjgir Champa Chhattisgarh

---- Petitioners**Versus**

1. Executive Engineer Water Resources Department Katghora Division , District Korba Chhattisgarh (Now Champa Division District Janjgir Champa) Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Kamlesh S/o Late Hira Lal Aged About 36 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
3. Lukheshwar S/o Late Roop Dhar Singh Aged About 80 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
4. Suresh Kumar S/o Late Amrit Lal Aged About 47 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
5. Ramkuari W/o Late Amrit Lal (Deleted) As Per The Hon'ble Court Order Dated 16-1-2020.
6. Sanjay S/o Late Hira Lal Aged About 33 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
7. Madhav (Died) Through Legal Heir Nill
 - 7.1 - 1. Sweta Patel W/o Late Madhav Patel Aged About 30 Years
 - 7.2 - 2. Manas Patel S/o Late Madhav Patel Aged About 2 Years
8. Chameli D/o Late Hira Lal Aged About 28 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh
9. Hulasmal W/o Late Hira Lal Aged About 55 Years R/o Village Bhedikona, Tehsil Dabhra , District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner/s	:	Mr. Himanshu Soni, Advocate.
For Respondents No.1	:	Mr. Ravish Verma, G.A.
None for others		

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11/06/2020**

1. This writ petition is directed against order dated 03.01.2007 passed by Additional District Judge Sakti in MJC No.7/2000, by which, petitioners' application under Section 151 CPC has been rejected.
2. Land of the petitioners and private respondents, held jointly was subjected to land acquisition proceedings, which culminated in passing of an award on 20.01.1999 by the Land Acquisition Officer.

Aggrieved by the award, insofar as amount of compensation is concerned, the petitioners herein moved an application for making a reference under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'). Petitioners' grievance was that proper compensation has not been paid and they are entitled to higher amount of compensation. Though, the land was held jointly by the petitioners and private respondents, only petitioners chose to invoke under Section 18 of the Act of 1894 and other joint holders did not make any application separately or jointly along with the petitioners for enhancement of compensation. The Land Acquisition Officer made a reference under Section 18 of the Act of 1894. The Court registered Miscellaneous judicial case impleading other joint holders also as non-applicant party.

3. Aggrieved by impleadment and inclusion of private respondents/joint holders, an application under Section 151 CPC was filed by the petitioners raising an objection that as other joint holders had not applied for any reference under Section 18 of the Act of 1894, they are not liable to be impleaded in the proceedings as party and prayer for enhancement of compensation by seeking reference under Section 18 of the Act of 1894 has been made only by the petitioners and not respondents/joint holders.

By impugned order, application has been rejected by the learned Court below on the premise that as the award was in respect of land held jointly by the petitioners and private respondents, private respondents also become necessary party, even if, they may not have applied for enhancement of compensation under Section 18 of the Act of 1894.

4. Short and pointed submission of learned counsel for the petitioners is that even if private respondents, herein, were joint holders of the land acquired under award dated 20.01.1999, all the holders of the land did not prefer application under Section 18 of the Act of 1894. Only petitioners namely-

Krishna Lal Patel, Resham Lal Patel and power of attorney holder Hari Shankar Patel, filed application for reference. Therefore, the scope of inquiry on a reference made under Section 18 of the Act of 1894 is whether the petitioners are entitled to enhance compensation as prayed for by them and not whether all other joint holders are entitled to compensation. By impleading other joint holders, the learned Reference Court has exceeded its jurisdiction in extending the scope of reference and inquiry under Section 18 of the Act of 1894, as if, other persons had also sought enhancement of compensation by invoking Section 18 of the Act of 1894. He would submit that only those, who have applied for enhancement of compensation under Section 18 of the Act of 1894, are entitled to compensation and those, who have not applied by invoking under Section 18 of the Act of 1894, even if, they may be joint holders of land acquired under an award, would not be entitled to receive any higher amount of compensation, merely, because some of the holders applied for enhancement and were granted enhanced compensation. In order to buttress this submission, learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of **Smt. Ambey Devi Vs. State of Bihar and another, AIR (1996) SC 1513**.

5. Learned State Counsel appearing on behalf of respondent No.1- Executive Engineer would submit that the Court below sought to protect the interest of other joint holders in the event compensation is enhanced in favour of petitioners, one set of joint holders of land, which was acquired under the law. He would further submit that even though, other joint holders may not have moved application for enhancement of compensation, order that may ultimately be passed by the Court below in reference under Section 18 of the Act of 1894 may affect the rights of other joint holders in the matter of payment of compensation against acquisition of land of which, they were also joint holders along with the petitioners. He would further submit that impleadment of other joint holders, in any case, does not adversely affect the rights of the petitioners and it would only be fair to all the joint holders that issue with regard to claim of enhanced compensation is decided after hearing all the joint holders whether or not they have applied for enhancement of compensation by invoking Section 18 of the Act of 1894.
6. After hearing learned counsel for the parties, in the considered opinion of this Court, the legal position with regard to the claim and entitlement for enhanced compensation of those joint holders, who did not choose to seek enhancement of compensation by invoking Section 18 of the Act of 1894, is no longer *res integra* and stands concluded by authoritative pronouncement of

the Hon'ble Supreme Court in the case of **Smt. Ambey Devi (supra)**. That was a case, where some of the joint holders of land applied for enhancement of compensation by invoking Section 18 of the Act of 1894. Remaining joint holder did not apply for enhancement of compensation but were contented and satisfied with the compensation awarded to them under the award. Later on, when compensation was enhanced in favour of those joint holders, who had approached the authority by invoking Section 18 of the Act of 1894, remaining joint holders of land started claiming higher amount of compensation on the premise that as compensation in respect of the joint holders has been enhanced, they are also entitled to enhanced amount of compensation. This claim was rejected by their lordships holding thus:-

“3. The learned counsel for the appellant contended that under Section 53 of the Act, the procedure prescribed under CPC is applicable to the proceedings of the Civil Court unless they are inconsistent with any of the provisions contained in the Act. Since Order 1, Rule 10, CPC requires impleadment of all necessary and proper parties, the appellant being a necessary party to the proceedings, she is entitled to the same compensation as was awarded to the other claimants. We find no force in the contention. The scheme of the Act is inconsistent with CPC regarding the entitlement to claim compensation under the Act. The CPC provides only the procedural format to adjudicate the dispute. After the award was made under Section 11 the Land Acquisition Officer was required to issue notice under Section 12 to the parties. As contemplated under Section 30 of the Act, the appellant is entitled to receive the compensation either under protest or without protest. When the compensation is received under protest under sub-section (1) of Section 18, the application in writing has to be made within the limitation prescribed under Section 18(2) to the Land Acquisition Officer objecting to either extent of the land, classification, value of the land or apportionment of the compensation and upon receipt thereof reference to Court would be made. Thereunder the applicant shall

be required to state the grounds on which he/she objects to the compensation etc. Valid reference is a pre-condition for the Civil Court to adjudicate the objections raised in the reference application. In this case, it is found by the High Court that the appellant had not made any application under Section 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down under Section 23 of the Act, would arise only when a valid reference has been made under Section 18 within the prescribed limitation. The jurisdiction of the Court is founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimant.

4. We accept the finding of the High Court that the appellant had not made any application under Section 18 though the appellant has asserted that she did make an application but no evidence has been placed before the High Court or in this Court. Thus, it is difficult to accept that such an application was in fact made before the Land Acquisition Officer within the limitation prescribed under Section 18(2) of the Act. Accordingly, we hold that the appellant had not filed any application, as required under Section 18(1) read with Section 18(2) of the Act. Section 53 does not apply to the facts of the case. The procedure prescribed under Section 18 and 30 is inconsistent with the procedure prescribed under Order 1, Rule 10 CPC. Order 1, Rule 10 CPC would apply to implead a necessary or proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties who may be bound by the decision. That question does not arise since inconsistent procedure has been prescribed under the Act. As held earlier, making an application in writing under sub-section (1) and within the limitation prescribed under sub-section (2) of Section 18 are conditions precedent for the Land Acquisition Officer to make a reference

under Section 18; only on its receipt, under Section 20 Civil Court gets jurisdiction to issue notice and thereafter to conduct enquiry, as contemplated under the Act. At that stage, the procedure of trial etc., as contemplated under the CPC, would apply and Section 53 of the Act would become applicable. It is an admitted position that the co-owner filed an application and had sought reference under Section 18 in respect of his share only. So, it is, as a fact, claims for compensation in specie and was paid towards 1/4th share to all the claimants. By no stretch of imagination, the application under Section 18 (1) by one of the co-sharers would be treated as one made on behalf of all the co-sharers. Accordingly, we hold that the appellant is not entitled to lay any higher compensation pursuant to an award made by the reference Court under Section 26 at the instance of one of the co-owners.”

It is, thus, clear from the aforesaid enunciation of law that as far as land acquisition is concerned, in the matter of proceedings under Section 18 of the Act of 1894, the jurisdiction of the Civil Court to determine higher compensation, as laid down under Section 23 of the Act of 1894, would arise only when a valid reference has been made under Section 18 of the Act of 1894, within the prescribed limitation. It has been also held that the jurisdiction of the Court is founded on a valid reference and then only the Civil Court gets jurisdiction to determine compensation on the basis of the objections raised by the claimant. In such a situation, if other joint holders did not joint in the application under Section 18 of the Act of 1894, claiming higher amount of compensation, the scope of reference would be limited and confined only to the claims made by those joint holders, who have actually moved application under Section 18 of the Act of 1894. Merely, because, the land which was acquired, was jointly held by large number of persons, some of which, chose to invoke Section 18 of the Act of 1894, those who have actually not approached the Civil Court, would not get compensation under the proceedings drawn at the instance of another set of joint holders. It essentially is a matter of jurisdiction of the Civil Court to embark upon inquiry with regard to claim of compensation by the applicants before it and not to decide claims of those, whose lands, have been acquired, irrespective of whether or not they have approached the Court seeking enhancement of compensation by

invoking Section 18 of the Act of 1894.

7. In the aforesaid decision of the Supreme Court, the matter was also examined from the point of view of necessary and proper parties. It was held that the procedure prescribed under Section 18 and 30 of the Act of 1894 is inconsistent with the procedure prescribed under Order 1 Rule 10 CPC. Order 1 Rule 10 CPC would apply to implead necessary and proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties, who may be bound by the decision. That question does not arise since inconsistent procedure has been prescribed under the Land Acquisition Act.
8. In view of aforesaid consideration, in the considered opinion of this Court, the learned trial Court exceeded its jurisdiction in directing impleadment of other joint holders, who had actually not made any application by invoking under Section 18 of the Act of 1894. As a necessary corollary, those persons are neither necessary nor proper party nor the Civil Court has jurisdiction to even enter into an inquiry with regard to entitlement of enhanced compensation of those joint holders, who had not made any application under Section 18 of the Act of 1894.
9. In the result, the impugned order is found to be unsustainable in law and is therefore set aside. Petition is accordingly allowed.
10. Before parting with the case, it has to be observed that there was interim order operating in the present case by virtue of order dated 24.04.2007, by which, interim relief, as prayed for, was granted. The interim relief prayed for by the petitioner was for staying effect and operation of impugned order as also for staying further proceedings in MJC No.7/2000 Krishna Lal and Ors. Vs. Karyapalan Yantri and Ors.
11. Now that the impugned order is set aside, the interim order no longer continues. There shall be no stay of further proceedings. The Court below shall proceed further with the pending reference proceedings before it.

Sd/-

(Manindra Mohan Shrivastava)
Judge