

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.10027 of 2022

VISHAL
SUBHASH
PAREKAR

Hirabai Krushna Badade

...Petitioner

vs.

Prashant Pannalalji Karnawat and Others

...Respondents

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Date: 2023.03.20
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Mr. Hrishikesh Shinde, for the Petitioner.

Mr. M.S. Bhandari i/b. Ms. Pranjali Bhandari, for Respondent No.1.

Ms. Chaitrali Deshmukh, for Respondent Nos. 2 and 3.

Mr. P.P.Pujari, AGP for Respondent Nos. 4 and 5.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 16, 2023

P.C.:

1. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties, heard finally at the stage of admission.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order passed by the learned Presiding Officer, Land Acquisition, Resettlement & Rehabilitation Authority, Nagpur dated 5th July, 2022 on an application (Exhibit 79) in Case No. 676/NSK/NSK/2019 whereby the application preferred by the petitioner herein to implead her as a party to the proceeding under section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act, 2013) came to

be rejected.

3. The petitioner claims to be a tenant in an agricultural land bearing survey No. 314 admeasuring area of 8 Acres 36 guntha situated at Nashik. In the wake of the dispute between the petitioner and family members, on one side, and respondent No. 1 and his family members, on the other side, the proceedings under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (the Act, 1948) have been instituted. The proceedings have culminated in a Writ Petition No. 5851 of 2016, pending in this Court, wherein the order passed by the Maharashtra Revenue Tribunal dated 9th February, 2016 in Revision No. 57 of 2003 is under challenge. By an order dated 29th July, 2019 the respondent No. 1 herein and other parties to the said petition have been directed to maintain status-quo in respect of the said agricultural land.

4. An area admeasuring 81 R out of the said land was acquired for the public purpose of cremation ground. Compensation was ordered to be paid to the petitioner and her family members and the respondent No. 1 and his family members in the ratio 75% : 25%. Dispute in relation thereto is also subjudice in First Appeal No. 1247 of 1988 which has been directed to be heard along with Writ

Petition No. 5851 of 2016.

5. In the intervening period, an area admeasuring 2860 sq.mtr out of the said agricultural land bearing survey No. 314/1P has been acquired for the purpose of 18 meter wide road. An award came to be passed on 12th March, 2019 in Case No. 3 of 2016 by the Dy. Collector, Nashik (LAO). Petitioner asserts the respondent No. 1 has, behind the back of the petitioner, not only withdrawn the entire amount of compensation awarded by the Land Acquisition Officer (LAO) but has also made an application to the Collector to make reference to the authority under section 64 of the Act, 2013 being Case No. 676/NSK/NSK/2019.

6. The petitioner thus filed an application (Exhibit 79) to implead her as party to the said proceedings as she and her family members are the persons interested within the meaning of clause (x) of section 3 of the Act, 2013. By the impugned order, the authority was persuaded to reject the application holding, inter alia, that the authority has no jurisdiction to entertain any application for impleadment.

7. Being aggrieved the petitioner has invoked the writ

jurisdiction of this Court.

8. Mr. Hrishikesh Shinde, learned counsel for the petitioner, would urge that the respondent No. 1 being fully cognizant of the fact that the petitioner and her family members have a direct and present interest in the acquired land surreptitiously made an application to the Collector for making a Reference to the Authority. Attention of the Court was invited to the order passed by this Court in Writ Petition No. 5851 of 2019 dated 29th July, 2019.

9. Inviting the attention of the Court to the definition of “person interested” contained in clause (x) of section 3 of the Act, 2013, Mr. Shinde submitted that the persons having tenancy rights under the relevant State laws have a definite interest in acquired land and the compensation awarded for its acquisition. The authority was, thus, not justified in rejecting the application on the ground that it has no power to widen the scope of its jurisdiction.

10. Mr. Bhandari, learned counsel for the respondent No. 1, joined the issue by canvassing a submission that it is well neigh recognized that the Reference Court or an Authority under section 64 of the Act, 2013, can not exercise the powers as a Court of original

jurisdiction and its authority is circumscribed by the provisions contained in section 64 of the Act, 2013.

11. To lend support to the aforesaid submission, Mr. Bhandari placed reliance on a judgment of the Supreme Court in the case of **Ram Prakash Agarwal and Another vs. Gopi Krishan (dead through LRs) and Others**¹. In the said case, the Supreme Court was confronted with a question as to whether the Reference Court could exercise the powers under Order IX Rule 13 read with 151 of the Code for setting aside an award passed under section 18 of the Land Acquisition Act, 1894 (the Act, 1894). The Supreme Court, inter alia, held that a person who has not made application before the Land Acquisition Collector, for making Reference under section 18 or 34 of the Act, 1894 can not get himself impleaded directly before the Reference Court. Such a person may maintain an application before the Land Acquisition Collector for Reference under section 18 or 30 of the Act, 1894, but can not make an application for impleadment or apportionment before the Reference Court.

12. In the case of **Ram Agarwal** (supra) the Supreme Court followed an earlier judgment in the case of **Shyamali Das vs. Illa**

¹ (2013) 11 Supreme Court Cases 296.

Chowdhry and Others², which was also referred to and relied upon by the authority for passing impugned order.

13. In the case of **Shyamali Das** (supra), the appellant had filed an application under Order 1 Rule 10 of the Code praying for her impleadment in the reference proceedings. The said application was rejected by the Reference Court opining that she was not a “person interested” within the meaning of section 3(b) of the Act. It was further held that since the jurisdiction of the Reference Court arose out of the order of reference, the provisions of Order 1 Rule 10(2) of the Code could not be invoked.

14. In that context, the Supreme Court observed, inter alia, as under:-

19] The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. Its jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the

2 (2006) 12 Supreme Court Cases 300.

Collector. It is not within its domain to entertain any application of pro intersse suo or in the nature thereof.

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.

15. Following the aforesaid judgment, in the case of the person **Ram Agarwal** (supra) the Supreme Court held that the person who has not made an application before the Land Acquisition Collector can not get himself impleaded directly before the Reference Court.

16. In the instant case, there is another factor which operates against the petitioner. Mr. Shinde, the learned counsel for the petitioner, upon being inquired by the Court as to whether the petitioner could still be granted opportunity to make an application to the Land Acquisition Collector to make reference to the Authority, fairly submitted that in fact such application was made and it came to be rejected during the pendency of this petition. A review Petition against the said order was stated to be pending before the Land Acquisition Collector.

17. If that is the case, the petition does not deserve to be entertained as no fault can be found with the view taken by the

authority in consonance with the afore-enunciated position in law.

Hence, the following order.

ORDER

1] The petition thus stands dismissed.

2] Rule discharged.

3] No costs.

(N. J. JAMADAR, J.)