

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.99 OF 2022

IN

FIRST APPEAL NO.201 OF 2022

Vidarbha Irrigation Development Corporation through Executive Engineer, Washim
Vs.

Bhikusing Sanga Rathod through Mukhtiyar Vijay Bhikusing Rathod through L.Rs.
Vijay Bhikusing Rathod and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. U. A. Patil, Advocate for appellant.
Mr. M. M. Agnihotri, Advocate for respondent No.1.
Ms. T. Udeshi, AGP for respondent Nos.2 and 3.
Mr. N. M. Kolhe, Advocate for intervenors/applicants.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/01/2023

1. By this application, applicants intervenors are seeking directions to add them as a party in the appeal under Order 1 Rule 10 of the Code of Civil Procedure (in short "CPC").

2. As per the contention of the applicants, the present applicants and respondent No.1 in the First Appeal are the legal heirs of late Shri Bhikusing Sanga Rathod. Besides the present applicants and respondent No.1, late Bhikusing Sanga Rathod was having five more sons namely, Ulhas Bhikusing Rathod, Sudam Bhikusing Rathod, Arun Bhikusing Rathod, Kishor Bhikusing Rathod and Pundlik Bhikusing Rathod respectively. Said Bhikusing Sanga Rathod is expired on 08.06.2014. After the death of late Shri Bhikusing Sanga Rathod present

applicants, respondent No.1 and others five brothers became the joint owner of the agricultural land having Gut No.180 admeasuring 1 H. 91 R situated at Mouza Panchala, Tq. Manora, District Washim.

3. It is further contended that the said land was acquired by respondent No.3 vide Land Acquisition Proceeding No.22/47/1996-1997. As the Land Acquisition Officer granted inadequate amount of compensation, late Shri. Bhikusing Rathod had filed reference application under Section 18 of the Land Acquisition Act. The said reference application was referred to Civil Judge Senior Division, Mangrulpir.

4. During the pendency of the said reference application, late Bhikusing Rathod had executed Power of Attorney in the name of respondent No.1. Therefore, respondent No.1 was looking after the reference application. It is further contended that due to the sickness late Bhikusing Rathod was physically and mentally very weak. By taking advantage of health condition of late Bhikusing Rathod, respondent No.1 by joining hands with other brothers and by keeping the present applicants in the darkness got executed the will deed in his favour with intention to grab enhance compensation amount towards the land. After the death of Shri Bhikusing Rathod present applicants made enquiry about the reference application and they came to

know that respondent No.1 had taken his name on record and learned Civil Judge Senior Division, Mangrulpur had passed its judgment and order. Thereafter, they applied for certified copies and they have also challenged the Will Deed dated 20.12.2001 executed by late Bhikusing Rathod which is illegal and not binding on present applicants. The applicants had also filed an application for grant of temporary injunction, however said application was disposed of by the learned trial Court subject to the condition that defendant No.1 i.e. respondent No.1 shall not misuse the amount mentioned in the application, till decision in the suit.

5. It is further contention of the applicants that they are the joint owners of the agricultural land bearing Gut No.180 admeasuring 1 H. 91 R. which was acquired by the respondent No.3. With this contention, the applicants prayed that they may be added as a party respondent in the above appeal.

6. Said application is strongly opposed by the respondent No.1 on the ground that applicants have no right to seek impleadment in the present proceedings. Though, the applicants had knowledge about the pendency of the proceedings before the reference Court, they had never attempted to move the reference Court for impleadment as a party after the demise of original

owner Shri Bhikusing Rathod. The entire proceeding was prosecuted by the answering respondent. It is further contended by the respondent No.1 that the applicants cannot seek impleadment in an appeal, if he has not filed an application for impleadment before the reference Court and this would amount to calling upon this Court to exercise the power under Section 30 of the Land Acquisition Act, 1984 to adjudicate the rights of the parties in an appeal arising out of award passed under Section 18 of the Land Acquisition Act. It is further contended by the respondent No.1 that the application is untenable and deserves to be rejected. It is further submitted that the applicant No.2 preferred a suit bearing No.263 of 2001 for partition. The same was dismissed for want of prosecution. Thereafter, they have challenged the Will Deed before the Civil Court seeking declaration that the said Will Deed is not binding on them vide Regular Suit No.12 of 2019 against the present respondents and other legal heirs of Bhikusing. Said suit is pending. All above these facts are suppressed by the applicants in the present application. It is submitted that the application deserves to be rejected in view of provisions under Section 30 of the Land Acquisition Act.

7. Heard learned Advocate Mr. N. M. Kolhe for the intervenor/applicants. He submitted that both the intervenor applicants being the legal heirs of late

Bhikusing Rathod. They are the necessary parties and in view of Order 1 Rule 10 of CPC, they be joined as a party respondents.

8. Whereas learned Advocate Mr. M. M. Agnihotri appearing for respondent No.1 submitted that both these applicants have not filed any reference under Sections 18 or 30. They required to file reference under Sections 18 or 30 of the Land Acquisition Act and shall establish their rights. They cannot directly impleaded as a party in the appeal. He invited my attention towards the provisions of Sections 18 and 30 of Land Acquisition Act as well as Order 1 Rule 10 of CPC. In addition to the same, he placed reliance on **Ambey Devi (SMT) VS. State of Bihar and another reported in (1996) 9 SCC 84** wherein it is held that 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. 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. He further placed reliance on **Ajjam Linganna and others Vs. Land Acquisition Officer, Revenue**

Divisional Officer, Nizamabad and others reported in (2002) 9 SCC 426 wherein it is held that it was not open to the appellants to have applied directly to the reference court for impleadment and to seek enhancement under Section 18 for compensation. He also placed reliance on **Chintaman s/o Barbaji Dupare Vs. Vithabai w/o Deoraoji Wahane and others reported in 2009 (4) Mh.L.J. 313** wherein it is held that application filed by the respondent No.1 seeking impleadment has categorically mentioned that she and the appellant had received compensation but the compensation granted by the Government was meagre. In such a situation, she could not have sought impleadment in the reference sought by the appellant permitting respondent No.1 to be joined as party in the reference sought by the appellant seeking enhancement would amount to permitting respondent No.1 to seek reference for higher compensation after the period prescribed under Section 18(2) of the Act has expired, which is not permissible under the Act.

9. Mr. Agnihotri, learned Advocate for the respondent No.1 submitted that the Hon'ble Apex Court has clearly held that jurisdiction of the reference Court is limited and it can decide objection in terms of reference made to it and it cannot widen the scope of the reference. Moreover, it is also pertinent to note that the application filed by applicants is for seeking impleadment, respondent No.1 has categorically

mentioned that applicant no.1 and the appellant had received compensation but the compensation granted by the Government was meagre. She had not filed any reference before the reference Court. Neither the Land Acquisition Officer nor reference Court can condone the delay in making the reference. The application filed by the respondent No.1 was not maintainable.

10. After hearing the rival submissions of the parties. It is undisputed that respondent No.1 and the intervenor applicants are the legal heirs of Bhikusing Sanga Rathod. It is undisputed fact that the intervenor applicants are the sisters of respondent No.1 and they have preferred Regular Civil Suit No.263 of 2001 which was dismissed for want of prosecution. It is also not in dispute that these applicants filed suit challenging the Will before the Civil Court seeking declaration that the said Will is not binding on them and the said civil suit is pending.

11. It is further not disputed that late Bhikusing Sanga Rathod who is the father of the intervenor applicants and the respondent No.1 was the owner of the agricultural land having Gut No.180 admeasuring 1 H. 91 R. situated at Mouza Panchala. The said land was acquired by the respondent No.3 vide Land Acquisition proceeding No.22/47/1996-97. As the Land Acquisition Officer awarded inadequate amount of compensation

late Shri Bhikusing Rathod had filed reference application under Section 18 of the Land Acquisition Act. The said reference application was sent to the Civil Judge Senior Division for adjudication. During the pendency of the said land reference, said Bhikusing Rathod was not keeping well therefore, he executed Power of Attorney in the name of respondent No.1.

12. During the pendency of the said application, he succumbed the death. Prior to his death, he has executed Will in favour of the respondent No.1. The other legal heirs i.e. other five brothers of the applicants have not raised any objection about the said Will. Said Will is challenged by the intervenor applicants before the Civil Court which is pending. Thus, it is clear that the intervenor applicants have neither filed reference application nor approached to the reference Court after the death of Bhikusing to add them as a party. From the pleadings in the application, it is crystal clear that both the applicants were well aware about the pendency of the said reference.

13. Both the applicants are seeking impleadment in view of Order 1 Rule 10 of CPC. Order 1 Rule 10 of CPC is reproduced as under.

“10. Suit in name of wrong plaintiff (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful

whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or added parties –

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) *No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.*

(4) Where defendant added, plaint to be amended – *Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.*

(5) *Subject to the provisions of the (Indian Limitation Act, 1877 (15 of 1877), section 22), the proceedings as against any person added as defendant shall be deemed to have begun only*

on the service of the summons.”

14. Mr. Agnihotri, learned Advocate for the respondent No.1 submitted that this Court cannot exercise the power under Section 30 of the Land Acquisition Act as there is a specific provisions under Section 30 when there is *inter se* dispute between the parties in respect of apportionment of the compensation amount, reference Court to decide the said *inter se* dispute.

15. In view of Section 18 of the Land Acquisition Act, 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 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. Sub-section (2) of Section 18 deals with that the application shall state the grounds on which objection to the award is taken. The provision to sub-section (2) speaks about the limitation within which the application is to be made.

16. Admittedly, in the present case, after the death of original owner Bhikusing Rathod, the applicants had not approached to the reference Court with prayer

to add them as a party contending that they are the interested persons. From the pleadings of the parties, it appears that there is a dispute regarding the compensation amount between the interested persons. Section 30 of the Land Acquisition Act, 1894 dealt with said situation. Section 30 is reproduced for the reference:

“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.”

17. In view of Section 30, 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 thereon or as to the persons to whom the same or any part thereof, is payable, the Collector may refer a dispute to the decision of the Court.

18. Thus, when any dispute arises then reference under Section 30 can be made, if a dispute is raised by any person other than one who have been mentioned as a persons interested in the award of the Collector. Here, the intervenor applicants have not applied to the reference Court by showing that they are the interested persons and their names to be impleaded.

19. Mr. Agnihotri, learned Advocate for the respondent No.1 placed reliance on two judgments of the Hon'ble Apex Court. Admittedly, in the present case also, the applicants have not made any application either under Section 18 or not filed an application before the reference Court to add them as a party. It is held by the Hon'ble Apex Court in **Ambey Devi** referred (supra) that the procedure prescribed under Sections 18 and 30 of the Land Acquisition Act is inconsistent with the procedure prescribed under Order 1 Rule 10 of CPC. Order 1 Rule 10 of CPC would apply to implead a necessary or a 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. Making an application in writing under Sub-section (1) and within the limitation prescribed under Sub-section (2) of Section 18 of the Land Acquisition Act are condition precedent for the Land Acquisition Officers to make a reference under Section 18. Only on its receipt under Section 20, the civil Court gets jurisdiction to issue notice, and thereafter to conduct enquiry. At that stage the procedure of trial etc. as contemplated under the CPC would apply and Section 53 of the Act would become applicable.

20. It is held by the Hon'ble Apex Court that the

appellant had not filed any application as required under Section 18(1). In view of the observation of the Hon'ble Apex Court here also the intervenor applicants have filed the application directly before this Court without approaching to the land reference Court. It is not open to the applicants to apply directly to this Court for impleadment and to seek the share in the compensation under Section 18 of the Land Acquisition Act.

21. The dispute under Section 30 of the Act can be sought by person whose names may not appear in the award and the Collector is not authorized to decide finally the conflicting rights of the person interested in the amount of compensation. The Collector has no power to finally adjudicate upon the title and to compensation and that dispute has to be decided in a reference under Section 18 or Section 30 of the Land Acquisition Act or by a separate suit. The scheme of the Act is that all disputes regarding quantum of compensation must be decided by resorting to the procedure prescribed under the Act and jurisdiction of the Court in its behalf is not restricted to the cases of apportionment, but extend to adjudication of dispute as to the persons, who are entitled to receive compensation and there is nothing in Section 30 of the Act, which excludes reference to the Court of a dispute raised by a person on whom the title of the ownership of the land devolves. Thus, the jurisdiction of the reference Court is

limited and it can decide objection in terms of reference made to it and it cannot widen the scope of the reference. It is also pertinent to note that the application filed by the applicants seeking impleadment had categorically mentioned that they are the interested persons as the legal heirs of the original owner but have not approached to the reference Court to add them as a party. They cannot seek the help of Order 1 Rule 10 of CPC, as the procedure given under the Act i.e. Land Acquisition Act is inconsistent with the procedure prescribed under Order 1 Rule 10 of CPC. It is specifically held by the Hon'ble Apex Court that the scheme of the Act is inconsistent with the CPC regarding the entitlement to claim compensation under the Act.

22. Accordingly, I hold that the application of the intervenor applicants is not maintainable before this Court.

23. In view of the same, application deserves to be rejected. Hence, I proceed to pass the following order.

ORDER

Application is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate