

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 1639 of 2023

Sudeshna Mukherjee
vs.
State of West Bengal & anr.

For the Petitioners : Mr. Kamalesh Bhattacharya,
Mr. Aninda Bhattacharya

For the Opposite Party No.2 : Mr. Siddhartha Banerjee,
Mr. Avishek Guha,
Ms. Sonal Agarwal

Hearing concluded on: 07.03.2023
Judgment on: 15.03.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated April 12, 2023, passed in LA 316 of 2004 by the Special Land Acquisition, First Court at Alipore, District 24 Parganas (South).
2. By the order impugned, the learned court allowed an application for addition of party filed by the opposite party no.2. According to the learned court, Smt. Ratna Mitra, the opposite party no.2 was a co-owner of the acquired land, but for some reason or the other, the Collector had taken Ashoke Kumar Roychowdhury, that is the predecessor of the petitioner, to

be the exclusive owner of the land. Reference to Form-16 of the case record was made.

3. According to the learned court, as notices were not issued to anybody else apart from Ashok in connection with the acquisition proceeding, none of the co-owners including Ratna's mother had the opportunity to seek a reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), within the stipulated time.

4. The court observed that as the notice of the award had not been served upon the other co-owners, (heirs of Sushil Kumar Roychowdhury) the application for addition of party should be allowed by taking aid of Section 53 of the said Act.

5. The legal proposition that in the absence of a reference under Section 18, the learned LA Judge could not go beyond the reference and implead any person in the proceeding, would not apply to a case when the owner of the property did not receive any notice. According to the court, as the Collector had not sent notices either under Section 9 or under Section 12 (2) of the said Act, Ratna's application could not be discarded on the sole ground that she had not filed any objection before the learned Collector in terms of Section 18 of the said Act.

6. Relying on a decision of ***Bagh Singh and ors. vs. The special Land Acquisition Collector, District Courts Jalandhar and anr.*** reported in ***AIR 1984 P & H 177***, the learned court observed that if a joint property was acquired and the co-owners did not have any distinct and specified share, then a reference under Section 18 of the said Act, by one of the co-owners, for enhancement of the compensation awarded by the Land

Acquisition Collector, would enure to the benefit of the other co-owners as well.

7. This exposition of law, according to the learned court, was not at variance with the settled proposition that an objection to the award could reach the LA court only on a reference by the Collector under Section 18 of the said Act. The learned LA Judge was of the opinion that Section 53 of the said Act could be pressed into action as addition of Ratna was not inconsistent with other provisions of the said Act. The Civil Procedure Code could be applied. Ratna's mother was an heir of the original owner and Ratna was claiming through her mother. Her mother did not have any notice about the award and could not seek reference. Ratna could directly be added in the proceeding as the co-owner and a person interested.

8. On the above grounds, the application for addition filed by Ratna in the LA proceeding was allowed. Ratna was added as a party in the proceeding as a claimant. The cause title was directed to be amended accordingly.

9. Mr. Kamalesh Bhattacharya, learned Advocate appearing on behalf of the petitioner submitted that the order impugned suffered from jurisdictional error. Section 53 of the said Act made the Civil Procedure Code applicable only in cases when such addition would not be inconsistent with the provisions of the said Act. In this case, without a reference under Section 18, the learned court could not have looked into Ratna's application at all. Section 53 was inconsistent with Section 18 of the said Act.

10. Section 18 allowed a 'person interested', who had not accepted the award to apply before the Collector and ask for a reference seeking

determination of the objection by the court. Objections could be with regard to the measurement of the land, amount of compensation, the person to whom it was payable or the apportionment of the compensation amongst the persons interested.

11. According to Mr. Bhattacharya, Ratna had two fold contentions. First, that her mother was also a co-owner along with Ashok who was not issued notice by the collector with regard to the award. Secondly, her mother was entitled to a share in the award, but Ashok was wrongly treated as the sole owner of the property. The proper course of action for Ratna would have been to apply before the Collector, in terms of Section 18. Proviso (b) to the said Section made it clear that a person who was not represented before the Collector, was entitled to apply under Section 18 within six weeks of receipt of notice from the Collector under Section 12, sub-Section (2) or in other cases, within six months from the date of the Collector's award, whichever period expired first. Such proviso made it amply clear that even a person who did not receive any notice under Section 12, sub-Section (2) of the said Act, could apply under Section 18 for reference. Only when nature of objection and the name of the 'person interested' appeared in the reference to be made by the Collector, could the learned LA court decide the point referred.

12. The court could not have come to the conclusion that Ratna's mother was a co-owner which made Ratna a 'person interested'. The aspect of title could not have been gone into by the learned court when the limited reference was the objection of 'Ashok' with regard to the valuation.

13. Mr. Bhattacharya referred to the decisions of the Hon'ble Apex Court, ***Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran***, reported in ***AIR 2003 SC 2302***, ***Shyamali Das v. Illa Chowdhry***, reported in ***AIR 2007 SC 215***, ***Ram Prakash Agarwal v. Gopi Krishan***, reported in ***(2013) 11 SCC 296***, ***Land Acquisition Officer v. Shivabai***, reported in ***AIR 1997 SC 2642***.

14. Mr. Siddhartha Banerjee, learned Advocate appearing on behalf of the opposite party no.2 submitted that the application for addition of party was maintainable in this case as Ratna was covered by the definition of 'person interested'. Mr. Banerjee, submitted that the said definition was inclusive and a daughter of a deceased sister became a co-owner and a person interested in the property. The property belonged to the father of Ashok and the grand-father of Ratna, namely, Late Sunil Kumar Roy Chowdhury. Ratna's mother was entitled to a share in the property meaning thereby, a share in the award as the heir of the original owner.

15. Mr. Banerjee, further submitted that Section 12 (2) of the said Act provided that the Collector was required by law to issue a notice of his award to the person interested even if such person was not personally present or represented before the Collector when the award was made. Admittedly, Ratna's mother was not represented before the Collector. The Collector was duty bound under the law to issue a notice to Ratna's mother. As Ratna's mother did not receive any notice, she could not apply before the Collector under Section 18 of the said Act, within the time prescribed. Thus, there was no other option, but for Ratna to apply before the learned court for addition in order to establish her right to the compensation as a co-

owner (daughter of a deceased person interested). Section 18 allowed the learned LA court to decide issues with regard to the persons in respect of whom the award had been made, as also the apportionment. Thus, the LA court was competent to decide Ratna's claim for compensation. Section 30 of the said Act also provided that reference of disputes with regard to the apportionment could be made by the LA Collector. An interested party, who was not a party to the reference could also be added under such circumstances.

16. Reference was made to the decision of the Hon'ble Apex Court in the case of ***Union of India v. Sher Singh***, reported in **(1993) 1 SCC 608**.

17. Referring to Section 28A of the said Act, Mr. Banerjee submitted that when a persons interested had a right to file an application before the Collector, requiring redetermination of the award on the basis of a decision of the learned LA court revising/enhancing an award at the instance of any applicant, not allowing a 'person interested' to contest the proceeding before the LA court in order to establish her right to the compensation, would be contrary to the scheme of the said Act.

18. The learned Advocate for the State-respondents did not raise any objection to the order impugned.

19. Having heard the learned Advocates for the respective parties, some facts are required to be discussed briefly.

20. By a notification dated May 12, 2000, issued by the Government of West Bengal, Land and Land Reforms Department, the acquisition was notified under Section 4 of the said Act. Acquisition of land approximately measuring about 19.36 acre, was made on behalf of the Central Government

for construction of Satyajit Roy Film and Television Institute, in Mouza Rajapur. Plot no.1028 was a part of the acquired land. Ashok Kr. Roy Chowdhury was recorded as the raiyat and owner in the record of rights.

21. The land schedule involved in this litigation was RS plot No.1028 of Mouza Rajapur, JL No.23, police station Jadavpur. Ashok was the father of the petitioner. The award was declared in favour of Ashok. A reference under Section 18 was filed by Ashok before the LA Collector. Ashok had raised an objection with regard to the valuation. Award was published in Land Acquisition case No. 418 of 2000-2001 for an amount of Rs.21,53,544.27/-, in the name of Ashok Kumar Roy Chowdhury. The LA Collector made the reference. LA 316 of 2004 was registered before the court. He died during the pendency of the LA 316 of 2004.

22. In the order impugned, it has been recorded that the matter reached the court by the end of 2004. In the reference only Ashok Kumar Roy Chowdhury was named as the person interested.

23. According to the reference and the award, none apart from Ashok was found to be interested in respect of the property in question. Admittedly, neither Ratna's mother nor any other heir of Ashok's father were parties to the LA case nor were their names published in the award. They were not found to be persons interested in respect of the property in question as per the entry against clause 5 of the FORM - 16. Ashok was treated as the only interested person, during the acquisition proceeding, publication of the award and also in the reference.

24. The reference also records that notices under Section 9 and Section 12 (2) of the said Act had been served. Although, the expression "persons

interested” includes all persons claiming an interest in the compensation to be paid on account of the acquisition of land under this Act, the title of the parties could not have been decided by the learned LA judge in this proceeding by holding that Ratna’s mother was a share-holder and by further holding that Ratna was a co-owner of the property as she was claiming through her deceased mother. The learned LA court had gone beyond jurisdiction and decided title to the property. Unless a competent civil court decided the title of the property or the Collector had mentioned Ratna or Ratna’s mother as one of the persons interested in the reference in question, the LA court could not have decided that Ratna was a claimant and should be added in the proceeding. The situation would have been otherwise, if in the award or in the reference, Ratna’s mother was mentioned. Ashok was the only person who had asked for a reference as he was dissatisfied with the valuation. In such a situation, Ratna could not be impleaded. This was not a case where the co-owner was asking for enhancement on behalf of others as well. Ratna’s mother and her other siblings had also filed an application for addition of party in this proceeding before the learned court, which had been dismissed long time ago. Ratna was claiming through her mother, whose application stood dismissed earlier, and the learned court recorded such fact.

25. The Act clearly provides that persons who had received notice and also persons who had not received notice, must approach the Collector for a reference under Section 18, if they wanted to challenge the award or any of the actions of the Collector or the person/persons to whom the amount was paid, or the rate of apportionment. The proper course for Ratna or Ratna’s

mother would have been to approach the LA Collector under Section 18 of the said Act, and then ask for a reference before the learned LA court.

Section 18 of the said Act is quoted below:-

“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 person 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.”

Section 19 is quoted below to understand the extent of information that was to be provided to the learned LA court, by the Collector.

19. Collector's statement to the court. - (1) In making the reference, the Collector shall state for the information of the court, in writing under his hand -

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

[(cc) the amount paid or deposited under sub-section (3A) of section 17; and]

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively.”

26. Section 19 (b) provides that the Collector must give information with regard to the name of the person whom he had reason to believe was interested in such land. In this case, Ashok was mentioned as the only interested person in the land in question.

27. Section 21 of the Act provides restrictions on the scope of the proceedings. It is a provision, which narrows down the scope of enquiry and determination by the LA Court only to consideration of the interest of the persons affected by the objection.

28. In this case, as per the reference, the persons affected by the objection would be Ashok(now his heir, the petitioner herein) and the parties liable to pay the compensation in case the valuation is enhanced.

29. When Ratna's mother was not treated as the co-owner in the acquisition proceeding and was not mentioned as a person interested, the reference was made at Ashok's instance in respect the valuation and/or the quantum of money that was awarded, no other person claiming to be an heir of Sunil, (erst-while owner) could be held to be a person interested. There had been no determination of rights of the parties (heirs of Sushil) in respect of the land in question. The scope of the enquiry in the proceeding before the learned LA court was whether the award should be enhanced or not,

and not the rights of the other children of Sunil and their proportionate share. Moreover, the records do not reveal that Sunil's name had ever been mentioned in LA proceedings before the Collector. In the LA court, for the first time a title dispute was raised by Ratna, claiming that her mother had a share in the land acquired and the share had devolved upon her. Interestingly, Ratna's mother had filed a similar application along with other siblings (heirs of Sunil), but the said application had been rejected by the LA court in these proceedings. The said order does not appear to have been challenged before a higher forum.

30. Section 23 of the said Act is quoted below:-

“23. Matters to be considered on determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration –

first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the

declaration under section 6 and the time of the Collector's taking possession of the land.

[(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.”

31. Section 23 provides that the market value of the land, the damage sustained by the person interested, the consequences of acquisition of the land of the persons interested, losses suffered due to such acquisition by the persons interested, etc., were the primary consideration for the learned court to decide the propriety of the quantum of compensation paid to the persons interested. The learned court could not go beyond the reference and decide that the property belonged to Sunil and as Ratna was claiming through her mother (daughter of Sunil) she had become a co-owner of the property.

32. Ratna filed a genealogical table claiming to be the grand-daughter of the original owner (Sunil), to substantiate her claim. Ashok had been recorded as the sole owner of the property. The record of rights were consulted during the acquisition proceedings. During such proceeding and also during publication of the award, no one came-forward challenging the title of Ashok to the property in question. Still, no such proceeding is

pending. No one has challenged the record of rights in terms of the provisions of the West Bengal Land Reforms Act, 1955.

33. The decision cited by Mr. Banerjee, namely, ***Union of India vs. Sher Sing and Ors.***, reported in **(1993) 1 SCC 608**, cannot be made applicable under the facts and circumstances of this case. In the case before the Hon'ble Apex Court, it was an admitted position that the State of Haryana had acquired the land for the benefit of the National Security Guard on the request of the Union of India. The landowners filed the reference petition under Section 18 of the said Act. During the pendency of the reference petition, the Union of India, through the Deputy Inspector General, National Security Guard, filed an application to be impleaded in the proceedings. The Hon'ble Apex Court was of the view that if the compensation was enhanced in any way, Union of India which required the land for the National Security Guard, would have to pay the enhanced compensation. Thus the Union was entitled to be heard in terms of Section 21 of the said Act. The addition was not inconsistent with the provisions of Section 18 of the said Act. However, in the present case, the question is whether a person who was not found to be owner of the property in the land acquisition proceedings, whose name had not been published in the award, who was not mentioned as a person interested in the reference, who had not applied before the Collector for a reference under Section 18, could come before the learned LA court directly and seek addition as a person interested and a co-owner, claiming a share in the award. The co-ownership of Ashok's siblings and the mother of the petitioner, through whom she claimed, had not been decided in a court of law. At least no such document had been mentioned in the order impugned.

The LA court could not go beyond the reference and decide that Ratna was a co-owner of the property in question and apportion the award accordingly. The land records were not in Sunil's name.

34. Decision relied upon by the learned trial judge in ***Bagh singh and Ors vs. The Special Land Acquisition Collector, District Courts Jalandhar and Anr.*** reported in ***AIR 1984 P & H 177***, was incorrectly applied in the facts of this case as there was no adjudication of co-sharership or co-ownership in this case.

35. In the decision of ***Rai Pramath Nath Mullick Bahadur v. Secy. of State for India in Council***, reported in ***AIR 1930 PC 64***, their Lordships held that the jurisdiction of the court under the Act, was a special one and strictly limited to the terms of the section. The jurisdiction emanated when a specific objection had been taken to the Collector's award and it was confined to a consideration of the said objection alone. Therefore, when the only objection taken was with regard to valuation and that alone was the matter referred, the court had no power to either determine or consider anything beyond it. In this case, the valuation was the only point referred at Ashok's instance, who is now represented by the petitioner, upon substitution as the legal heir of Ashok. The learned court could not have added another person, who according to the learned court 'appeared' to be a co-owner of the land. Here, the determination to be made was not whether Ashok was the only person entitled to payment of the award or there were other persons interested in the said award. The issue for determination was the valuation/award. The relevant paragraphs of the said judgment, are quoted below :

“4. The material section of the Act under which the references were made to the Court is 18, which is in the following terms:

“18.—(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 land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.”

5. The section clearly specifies four different grounds of objection—namely: (1.) to the measurement of the land: (2.) to the amount of compensation; (3.) to the persons to whom it is payable; and (4.) to the apportionment. The distinctions between objection to area and to amount of compensation are also borne out by other sections of the Act: see ss. 9, 11, 19 (d), and 20 (c). The appellant's objection was manifestly only to the amount of compensation, and was correctly so described by the Collector in making the references.

6. By s. 20 the function of the Court upon a reference being made is “to determine the objection,” and only persons “interested in the objection” are to be summoned before it, and by s. 21 the scope of the inquiry is to be “restricted to a consideration of the interests of the persons affected by the objection.”

7. Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the “matter” referred, and the Court has no power to determine or consider anything beyond it.

8. For these reasons their Lordships are of opinion that the ruling of the Courts in India was right, and that this appeal fails, and they will humbly advise His Majesty that it should be dismissed. The appellant must bear the costs of the appeal.”

36. In the decision of ***Kothamasu Kanakarathamma and Ors. v. State of Andhra Pradesh and Ors.***, reported in (1964) 6 SCR 294, the Hon'ble Apex Court held as follows: -

“3.

We are further of the opinion that the High Court, after the plea had been raised, would have been well advised to adjourn the matter for enabling the appellants before us, who were respondents in the High Court, to take appropriate steps for compelling the Land Acquisition Officer to make a reference.

4. All the same since the point was permitted to be urged before it by the High Court and has been raised before us on behalf of the State it is necessary to decide it. On behalf of the appellants it was contended before the High Court that by reason of the failure of the State to raise the plea before the Subordinate Judge as to the absence of a reference the State must be deemed to have waived the point. The High Court accepted this argument upon the view that this was not a case of inherent lack of jurisdiction and that the defect in the procedure was such as could be waived. In our opinion the view of the High Court is not correct. Section 12(1) of the Land Acquisition Act provides that after an award is filed in the Collector's office it shall, except as provided in the Act, be final and conclusive evidence as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among the persons interested. The only manner in which the finality of the award can be called into question is by resort to the provisions of Section 18 of the Land Acquisition Act, sub-section (1) of which reads thus:

“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.”

The proviso to sub-section (2) prescribes the time within which an application under sub-section (1) is to be made. Section 19 provides for the making of a reference by the Collector and specifies the matters which are to be comprised in that reference. Thus the matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contention of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under Section 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in Nusserwanjee Pestonjee Khan v. Meer Mynodeen Khan wullud Meer Sudroodeen Khan

Bahadoor [6 MIA 134 at 155] wherever jurisdiction is given by a statute and a such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference insofar as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence.”

37. Thus, the only manner in which finality of an award could be challenged was by seeking a reference. Otherwise, the award was full and final, on the apportionment and the person to whom it was paid. Only the quantum was to be decided.

38. In the decision of ***Sharda Devi v. State of Bihar and Ors***, reported in **(2003) 3 SCC 128**, the Hon’ble Apex Court held as follows:-

“34. The award made by the Collector is final and conclusive as between the Collector and the “persons interested”, whether they have appeared before the Collector or not, on two issues : (i) as to true area i.e. measurement of land acquired, (ii) as to value of the land i.e. the amount of compensation, and (iii) as to the apportionment of the compensation among the “persons interested” — again, between the Collector and the “persons interested” and not as amongst the “persons interested” inter se. In the event of a reference having been sought for under Section 18, the Collector's award on these issues, if varied by the civil court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by the Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum.

35. In *Nusserwanjee Pestonjee v. Meer Mynodeen Khan* [6 Moo IA 134 (PC)] their Lordships of the Privy Council have held that wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create

and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. The Privy Council decision abovesaid was followed and the statement of law made therein approved by this Court in Kothamasu Kanakarathamma v. State of A.P. [AIR 1965 SC 304 : (1965) 1 An LT 14] This Court held that under the Land Acquisition Act the matter goes to the court only upon a reference made by the Collector and there is no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. The court can adjudicate upon the matter referred to it but the court is certainly not invested with the jurisdiction to consider a matter not directly connected with it and this is not a matter of mere technicality. A case of lack of inherent jurisdiction will not be cured by mere failure to object to the proceedings before the court on the ground of an absence of reference on matters not referred. There can be no waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence.

36. To sum up, the State is not a “person interested” as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression “parties to the litigation” carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject-matter of acquisition by the State. The question of deciding the ownership of the State or holding of any interest by the State Government in proceedings before the Collector cannot arise in the proceedings before the Collector [as defined in Section 3(c) of the Act]. If it was government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the civil court for determination either under Section 18 or Section 30 of the Act. The reference made by the Collector to the court was wholly without jurisdiction and the civil court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings under Section 30 of the Act beginning from the reference and adjudication thereon by the civil court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so.”

39. In the decision of ***Ajjam Linganna and Ors. v. Land Acquisition Officer and Ors.***, reported in **(2002) 9 SCC 426**, the Hon'ble Apex 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 at least filed an application on 14-9-1993 before the Land Acquisition Officer seeking reference.

5. In the above facts and circumstances, these appeals preferred by the various appellants except Ajjam Linganna are liable to be set aside inasmuch as it was not open to the reference court to implead the said appellants in the reference court without their having approached the Land Acquisition Officer seeking reference earlier."

40. In the decision of ***Prayag upnivesh awas Nirman Sahkari Samiti Ltd. Vs Allahabad Vikas Pradhikaran And Anr.***, reported in **(2003) 5 SCC 561**, the Hon'ble Apex Court held that the reference court got jurisdiction only if the matter was referred to it under Sections 18 and 30 of the Act. The reference court could not widen the scope of its jurisdiction or decide matters which were not referred to it. Relevant portion of the said judgment is quoted below:-

"7. It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that the civil court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it. This question was considered by various judicial authorities and one of the earliest decisions reported on this point is *Pramatha Nath Mullick Bahadur v. Secy. of State* [AIR 1930 PC 64 : ILR 57 Cal 1148] . This was a case where the claimant sought a reference under Section 18 of the Act. In the application filed by the claimant, he raised objection only regarding the valuation of the land. The claimant did not dispute the measurements of the land given in the award. Before the Reference Court, the claimant raised objection regarding the

measurements of the land and sought for fresh measurements. This was refused and the claimant applied to the High Court for revision of this order, but without success. Again, in the appeal, the claimant raised the same objection regarding measurements and the High Court rejected it. The Judicial Committee of the Privy Council held thus: (AIR p. 65)

“Their Lordships have no doubt that the jurisdiction of the courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the ‘matter’ referred, and the court has no power to determine or consider anything beyond it.”

8. In another case, namely, *Mohd. Hasnuddin v. State of Maharashtra* [(1979) 2 SCC 572] this Court observed: (SCC p. 584, para 25)

“25. Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynodeen Khan* [(1855) 6 MIA 134] wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise.”

9. In *K. Kanakarathamma v. State of A.P.* [AIR 1965 SC 304 : (1964) 6 SCR 294] the Land Acquisition Officer made a reference under Section 30 for the apportionment of the compensation amount amongst the various claimants. Six of the appellants did not accept the award of the Land Acquisition Officer and made application to him for referring the matter for determination by the court, but no reference was made by him pursuant to this application. When the matter came up before

the court, it proceeded on the footing that the reference made to it was not merely limited to the apportionment of compensation but also with respect to the amount of compensation. No objection, however, was raised by the State before the Reference Court regarding the absence of reference. When the matter came up before the High Court, the Government Pleader raised this objection. Though the High Court allowed the plea to be raised before it, but ultimately it negatived the plea. The appellants contended before the High Court that pursuant to the failure of the State to raise the plea before the Subordinate Judge as to the absence of a reference, the State must be deemed to have waived the point. Rejecting this contention, this Court held: (AIR p. 306, para 3)

“[T]he matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contentions of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under Section 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynodeen Khan* [(1855) 6 MIA 134] wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference insofar as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence.”

10. In a recent decision of this Court in *Ajjam Linganna v. Land Acquisition Officer* [(2002) 9 SCC 426] it was held that the Reference Court has no power to convert the reference under Section 30 into one

under Section 18 of the Act at the instance of those who did not apply for reference earlier.

11. In the instant case, there was no reference by the SLAO under Section 18 of the Act and the appellant Samiti was not before the SLAO. Even the application allegedly filed on 12-10-1987 has rightly been characterized as suspicious as no mention has been made by the SLAO in the reference letter dated 12-10-1987. In the absence of a proper reference, the Additional District Judge had no jurisdiction to decide the question of enhancement of compensation. When such an objection was not referred to the court, there was complete lack of jurisdiction. In our view, the decision of the High Court is correct and requires no interference. The appeal is without merit and is accordingly dismissed with costs.”

41. In the decision of ***Shyamali Das vs Illa Chowdhry***, reported in **2006 12 SCC 300**, the Hon’ble Apex held as follows:-

“**19.** The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also to 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. His jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within his domain to entertain any application of pro interesse suo or in the nature thereof.

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 22-9-2000. 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.

22. This Court had some occasion to consider the question as to who would fall within the ambit of the term “person interested”.

23. In *Sharda Devi v. State of Bihar* [(2003) 3 SCC 128] it was opined that a State who claims ownership of the land in question was not a party interested stating: (SCC p. 147, para 36)

“If it was government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire

the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the civil court for determination either under Section 18 or Section 30 of the Act. The reference made by the Collector to the court was wholly without jurisdiction and the civil court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings under Section 30 of the Act beginning from the reference and adjudication thereon by the civil court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so.

24. In *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran* [(2003) 5 SCC 561] this Court opined:

“7. It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that the civil court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it.

25. We may also notice that prima facie the appellant cannot be said to have any right, title and interest in the property but we do not intend to express our final opinion thereupon as the matter is pending consideration before the civil court.

26. A disputant is entitled to an interim order, provided he is a party thereto. If for one reason or the other, he cannot be impleaded as a party to the proceeding, the court would have no jurisdiction to pass any interim order in his favour.

27. If the impleadment application was not maintainable, it was required to be dismissed in limine. It could not have been entertained only for pressing an interim order. Law does not contemplate exercise of such a jurisdiction by a court of law. Any such order passed is coram non judice.”

42. In paragraph 17 of the above decision, the submission of learned senior counsel that the appellant should at least be given an opportunity to

get her title in respect of Touji No.145 adjudicated, was also turned down.

The relevant paragraph is quoted below:-

“17. Mr Uday U. Lalit, learned Senior Counsel appearing on behalf of the appellant, submitted that she should be given an opportunity to get her title in respect of Touzi No. 145 adjudicated at same forum. Having regard to the subsequent events viz. correction of the revenue records in the year 2005 and keeping in view the fact that the aforementioned Title Suit No. 57 of 2001 is still pending, the High Court, it was urged, committed a serious error in passing the impugned judgment. It was submitted that unless some protection is afforded to the appellant by imposing conditions in regard to the withdrawal of the amount deposited by the Land Acquisition Collector, it would not be secured.”

43. In ***Smt. Ambey Devi vs. State of Bihar***, reported in **1996 3 SCR 303**, the issue before the Hon'ble Apex Court was whether in a reference sought by one co-sharer, another co-sharer could claim enhancement of compensation, without seeking reference under Section 18 of the Act. In that case one of the co-sharers sought reference to the civil court under Section 18. The reference was made. The court enhanced the compensation. Thereafter, the other co-owner who had not preferred the reference, filed an appeal claiming enhancement of the compensation in respect of the land, at par with other co-owners. The claim was rejected by the High Court by holding that the appellant had not filed any application under Section 18 after the award was made by the Collector and as such, she was not entitled to get enhanced compensation. An appeal was preferred against the said order. An argument was advanced before the Hon'ble Apex Court that considering Section 53 of the said Act, the provisions of Order 1 Rule 10 of the Code, providing for impleadment of all necessary and proper parties would be applicable. The appellant therein being a necessary party to the proceeding was entitled to the same compensation as was awarded to the

other claimants. The court rejected the contention by observing that the scheme of the Act was inconsistent with the Code of Civil Procedure. The

Hon'ble Apex Court observed:-

“The procedure prescribed under sections 18 and 30 is inconsistent with the procedure prescribed under Order 1, Rule 10, Civil Procedure Code. Order 1, Rule 10, Civil Procedure Code 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 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 Civil Procedure Code would apply and section 53 of the Act would become applicable.’

The Apex Court was then pleased to hold that:—

‘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.’

From this judgment it will, therefore, be clear that parties, even may be co-sharers, who had not applied for enhancement, cannot in the absence of they applying for enhancement against their share be entitled to enhancement.”

44. Upon appreciation of the law as laid down by the Hon'ble Apex Court, it can be safely concluded that a person who was likely to be affected by the objection to the award, could be added by the LA Court. Here, Ashok wanted enhanced compensation. Any person likely to be affected by the enhancement if allowed by the court, should be added. Without there being ascertainment of the right of Ratna or her predecessor to the property acquired and without there being any reference to the court on the basis of Ratna's mother's claim as a person interested, the question of adding Ratna

would be contrary to the decisions of the Hon'ble Apex Court and the provisions of Sections 18 to 21. The principle of law as settled by the Hon'ble Apex Court, leads me to the conclusion that Ratna could not be impleaded in this proceeding.

45. Section 53 only provides that the provisions of the Civil Procedure Code to the extent they are not inconsistent with anything contained in this Act, would apply to the proceedings before the LA Court. The reference disclosed the parties who would be before the Court. Therefore, the proceeding before the LA Court would start from that stage. Addition of Ratna was inconsistent with the provisions of the said Act. Ratna's title as a co-owner will have to be adjudicated before a competent forum and in accordance with law.

46. The revisional application is allowed.

47. The order impugned is set aside.

48. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)