



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1022 WRIT PETITION NO. 6270 OF 2022

RAMKRISHNA AMBADAS MADAKE DIED THROUGH L.RS. URMILABAI
RAMKRISHNA MADAKE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND
OTHERS

...

Mr. Vivekanand V. Ingale – Advocate for Petitioners

Mr. R.B. Dhaware – AGP for Respondent No.1, State

Mr. S.B. Choudhari – Advocate for Respondent Nos.2 and 3

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 03.12.2025

PER COURT :

1. Heard learned Counsel – Mr. Vivekanand V. Ingale for the petitioners, learned A.G.P. for respondent No.1, State and learned Counsel – Mr. S.B. Choudhari for respondent Nos.2 and 3.

2. The petitioners challenge the order dated 09.03.2022 passed by the learned Civil Judge Senior Division, Osmanabad in Special Darkhast No.640 of 2014 below Exhibit 11, whereby the application filed by respondent Nos.2 and 3 under Order I Rule 10 of the Civil Procedure Code came to be allowed.

3. Learned Counsel for the petitioners submits that since the reference was already allowed, the application Exhibit-11 has been

filed at the execution stage. He further submits that in land acquisition proceedings, such application for impleadment is not maintainable at the stage of execution. In support of his contentions, he has relied upon the following judgments :

- (a) Hon'ble Apex Court in the case of **Ambey Devi (Smt.) Vs. State of Bihar and Another** reported in *(1996) 9 Supreme Court Cases 84* wherein it has been held that :

“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 Acts the appellant is entitled to receive the compensation either under protest or without protest. When the compensation is received under protest under subsection (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.”

- (b) This Court in the case of **Raghunath Dhondur Navde Vs. Pandit Ramchandra Navde and Ors.** reported in *2000 (2) Mh.L.J.81* held as under :

“7. In view of the aforesaid decisions, as the petitioner was not a party to the Land Acquisition Reference, he was not entitled to appear before the Civil Court. In the present matter, the petitioner appeared in the proceeding after the reference under section 18 has been adjudicated and when the execution petition was pending. In the said execution petition also he was not a party and therefore he is not entitled to appear because section 47 of the Code of Civil Procedure, after amendment, does not permit such parties to appear in the proceedings. In fact those persons who are parties to the original proceedings before the Civil Court which passed the decree, their legal representatives and the purchasers of the said property as defined in section 47 are only entitled to appear while the question of discharge, satisfaction etc. of the decree is to be considered under section 26(2) the award passed by the Civil Court in a reference under section 18 is a decree and therefore, the provisions of section 47

of the Civil Procedure Code will cover up the said decree. In the result the present petitioner is not entitled to appear before the Executing Court for the purposes of apportionment of the enhanced compensation. The ultimate analysis shows that the application which was filed by the present petitioner before the Executing Court by Exhibit 20 was without jurisdiction and the Executing Court should not have entertained such an application. Therefore appropriate remedy which was available to the present petitioner was to file a suit in view of the provisions of section 31 second proviso and to seek stay orders in that proceedings.”

- (c) This Court in the case of **Hafiz Ismail Shaikh and Ors. Vs. Special Land Acquisition Officer, Panvel and Ors.** reported in *2005 (3) Mh.L.J. 232*, wherein it has been held as under :

“7. Considering the above, we may consider the judgment cited on behalf of the respondents to find out whether the issue is open for consideration by this Court or stands concluded in view of the judgments of the Apex Court as also of this Court. Before we proceed further it may be mentioned that apart from Section 18 there is another provision, Section 30, by virtue of which if there be a dispute as to apportionment of the compensation 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. This section is independent of Section 18 and is a power in the Collector to make a reference if he is not in a position to decide as to apportionment. It is also a power in the Collector if interested persons approach him within reasonable time to make a reference which will be limited to the apportionment awarded. In *Smt. Ambey Devi V. State of Bihar and Anr.* the issue before the Apex Court was whether when reference is sought by one of the co-sharers another co-sharer can claim enhancement of compensation without seeking reference under Section 18 of the Land Acquisition Act. In that case one of the co-owners sought for reference to the Civil Court under Section 18 which reference was made. The Court enhanced

compensation. Thereafter the other co-owner who had not preferred reference filed an Appeal claiming enhancement of compensation in respect of her land on par with other co-owners. That claim was rejected by the High Court by holding that the appellant had not made any application under Section 18 after the Award was made by the Collector and as such she was not entitled to enhanced compensation. An Appeal was preferred against that order. An argument was advanced before the Apex Court that considering Section 53 of the Civil Procedure Code the provisions of Civil Procedure Code are applicable and as such Order 1, Rule 10 of Civil Procedure Code providing for 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. The Court rejected the contention by firstly observing as under :--

“We find no force in the contention. The scheme of the Act is inconsistent with Civil Procedure Code regarding the entitlement to claim compensation under the Act. The Civil Procedure Code 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 precondition for the Civil Court to adjudicate the objections raised in the reference application.”

Thereafter proceeding further the Apex Court observed as under :--

"The procedure prescribed under Section 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.

11. A perusal, therefore, of the authorities and of the provisions would indicate that when a reference is made under Section 18 the Collector under Section 19 has to make a reference. In the reference made the names of the persons whom he has reason to think interested in such land have to be set out. It is in this context that a notice has to be served on such persons under Section 20. Section 20 then provides for a notice to such named parties

interested in the objection. This therefore, be referable to Section 19(b) and not to persons whose names had not been referred to pursuant to reference under Section 18 by virtue of Section 19.

12. Section 53 only provides that the provisions of Civil Procedure Code to the extent they are not inconsistent with anything contained in this Act shall apply to the proceedings before a Court. The reference would disclose who are parties before the Court. Therefore, the procedure applicable would be from that stage, as the Apex Court has noted that the provisions of Order 1, Rule 10 are inconsistent with Section 18 and 30 of the Act. Though in the present case the reference was rejected on the ground that there was delay in my opinion for the reasons as now disclosed the ultimate order need not be interfered with.”

He further submits that the application itself was not maintainable.

4. *Per contra*, learned Counsel for respondent Nos. 2 and 3 submits that they filed the application claiming themselves to be the legal heirs of deceased Ramkrishna Ambadas Madake and therefore after his death, they preferred an application under order I Rule 10 of C.P.C. He submits that, earlier the said application was not decided and the present petitioners assailed the same before this Court. This Court then directed the learned Executing Court to decide the application below Exhibit 11. He further submits that the Executing Court, while deciding the application, has considered the documentary evidence produced by respondent Nos.2 and 3. The learned Executing Court observed as under :

“4. In support of present application applicant have filed on record Adhar Card, Pan Card and Election Card of Meena Ramkrishna Madake. Applicants further filed on record Birth Certificate of applicant No.1. On all the documentary evidence filed by applicants name of Ramkrishna Ambadas Madake appeared as a husband and father of applicant Nos.1 and 2 respectively. Document filed on record prima – facie shows that, applicant No.1 is daughter whereas applicant No.2 is wife of deceased Ramkrishna Ambadas Madake. Who is the first wife of Ramkrishna Ambadas Madake is the part of evidence ut at this stage prima – facie it appears that, Meena i.e. present applicant No.2 is the wife of applicant No.1 is the daughter of deceased Ramkrishna Ambadas Madake.”

5. I have also considered the order passed by this Court in Writ Petition No.164 of 2016, wherein this Court, in paragraph 11, observed that, the Executing Court shall decide the application Exhibit 11.

6. Considering the findings recorded by the learned Trial Court and in view of the order passed by this Court in Writ Petition No. 164 of 2016, I am not inclined to entertain the present petition under Article 227 of the Constitution of India. Hence, the petition stands dismissed.

7. Pending civil applications, if any, also stand disposed of.

[SIDDHESHWAR S. THOMBRE]
JUDGE