

CASE NO.:
Appeal (civil) 4632 of 2006

PETITIONER:
Shyamali Das

RESPONDENT:
Illa Chowdhry & Ors.

DATE OF JUDGMENT: 01/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No.18012 of 2006 @ CC No. 3531 of 2006]

S.B. SINHA, J :

Delay condoned.

Leave granted.

This appeal is directed against a judgment and order dated 30th September, 2005 passed by a learned Single Judge of Calcutta High Court in C.O. No. 347 of 2005 whereby and whereunder the revision application filed by Respondent No. 1 herein from a judgment and order dated 26th August, 2005 was allowed.

Appellant and Respondent No. 3 claimed themselves to be the heirs and legal representatives of Rani Rashmoni. The appellant states that after demise of Rani Rashmoni, the entire estate comprising Touzi No. 145 devolved upon Raja Amrita Nath Das. Upon his demise, the property devolved upon his four sons whereafter a partition took place amongst his legal heirs.

A part of Tauzi No. 145 was admittedly acquired in the year 1993 for construction of housing estate by the West Bengal Housing Board. Name of Respondent No. 1 herein admittedly appeared in the record of rights. She was given notice of acquisition. Possession of the land was taken from the respondent on 16.07.1997. An award was made by the Land Acquisition Collector on 26.11.1998. Dissatisfied with the said award passed by the Collector, the respondent made a request to the Collector to make a reference in terms of Section 18 of the Land Acquisition Act, 1894 (for short "the Act"); pursuant whereto or in furtherance whereof a reference was made on 18.02.1999. Some other references were also made at the instance of Respondent No. 1 which were registered as L.A. Case Nos. 3 to 35, 38 and 39 of 2001.

On or about 15.09.2000, the appellant filed a purported public interest litigation before the High Court of Calcutta which was marked as writ petition No. 14842 of 2000 challenging the acquisition of land and change in the names of the owners thereof in the record of rights. By an order dated 15.09.2000, the said writ petition was dismissed as withdrawn.

The appellant filed a suit bearing suit No. 57 of 2001 claiming title over the said property on 7.09.2001 in the Court of 9th Civil Judge, Sr. Division inter alia for passing a decree for mandatory injunction restraining the defendants therein from taking any money from the Land Acquisition Collector and for declaration that the appellant was the rightful owner of the

properties described in the Schedule appended thereto and also for a decree for recovery of possession. The said suit is still pending.

Although an award had been made, the appellant filed two applications, one under Sections 11 and 11-A of the Act on 5.08.2004 before the Collector and another under Sections 5 and 5-A thereof objecting to the acquisition of the land thereby. Concededly, the said applications were not maintainable at that stage.

She filed an application under Order I, Rule 10(2) of the Code of Civil Procedure praying for her impleadment in the reference proceedings inter alia on the premise that she had filed the aforementioned suit No. 57 of 2001. The said application was dismissed by an order dated 22.06.2004 by the learned Land Acquisition Judge opining that she was not a 'person interested' within the meaning of Section 3(b) of the Act. It was held that as the jurisdiction of the reference court arises out of the order of reference, the provisions of Order I, Rule 10 (2) of the Code of Civil Procedure was not maintainable. The correctness or otherwise of the said order has not been questioned and, thus, it attained finality.

She also filed a writ petition in the High Court at Calcutta which was marked as Writ Petition No. 1928 of 2000. A learned Single Judge of the said High Court opined:

"This Court sitting in writ jurisdiction cannot determine the entitlement to the compensation awarded. Therefore, if the petitioner is aggrieved, it is open to her to apply before the collector for reference under section 30 read with section 31 of the Land Acquisition Act if she is so advised. Section 30 does not postulate any time limit and as such it can be made at any point of time if such application is made, the collector may decide the same and pass appropriate order on the said application in accordance with law. I (sic) necessary, by making reference under the provision of section 30 and may also resort to section 31 if she is so advised according to his own wisdom and discretion after having examined the dispute raised that there are prima facie dispute existing which required to be examined. In such circumstances, the collector is not entitled to adjudicate the dispute which is the subject matter of adjudication by a court, it is only to say that there is no prima facie case raising any dispute and if prima facie case exists then he has to make the reference under section 30 read with section 31. This decision is to be taken before further disbursement is made. The collector will also hear the other no appear (sic) respondents whom the petitioner will serve a copy of this order along with a copy of the writ petition within a period of one week from date, in default, this order will stand recalled."

It is not in dispute that no such application was filed by her under the said provisions. She, thus, did not avail the opportunity to take recourse to law.

She filed another application for grant of probate which was marked as OS No. 1 of 2006. An order under Order VII, Rule 11 of the Code of Civil Procedure was passed in relation thereto by the learned Addl. District Judge at Alipore holding it to be frivolous in nature stating:

"The plaintiff herself stated that the original Will is

allowed in connection with case no. 33 of 1961, District Delegate Judge, Alipore. In this connection the Ld. Lawyer for the defendants referred a decision reported in 73 CWN 820 wherein it has been held that the Will in question and for which the present suit filed by the defendant granting probate is forged i.e. the alleged Will made by testator Amrita Nath on 17th April, 1921

It is very funny thing that the plaintiff prayed for granting letter of administration of the Will estate under the said Will in respect of the properties and securities and other assets particularly mentioned in the schedule A, B and C in favour of the plaintiff but nowhere in the plaint about any whispering about the Will when it was made and also the plaintiff did not mention 'C' schedule in the plaint.

Considering the above facts and circumstances and the evidence on record I am of opinion that even if all averments in the plaint are accepted in toto, does not disclose any clear right to sue and not possible to grant any relief as sought for and I am also further observed that the suit is frivolous and not on the facts of it can be decided by this Trial Court to avoid arduous procedure for trial as such the present petition filed by the defendant to decide the maintainability of the suit as a preliminary issue is justified and answered against the plaintiff."

Her application before the revenue authorities, however, succeeded in 2005. Operation of the said order, however, was stayed by the High Court. Relying on or on the basis of the said purported subsequent event, another application was filed by the appellant herein for her impleadment in the reference proceeding.

The reference cases were allowed by the learned Special Land Acquisition Judge by judgment and award dated 26th August, 2004. An application was filed by the appellant for setting aside the said judgment of the Land Acquisition Judge. The said application was entertained and a miscellaneous case was directed to be registered. By an order dated 12th September, 2005, a direction was made that payments with regard to LA case No. 3 to 33, 38 and 39 be kept in abeyance until further orders.

Respondent No. 1 moved an application before the learned Special Judge on 12th September, 2005 whereupon the earlier order was clarified stating that the same would not affect the process of depositing of compensation amount in court. An application was filed to vacate the ex-parte stay but the same was refused by an order dated 17th September, 2005.

The applications filed by Respondent No. 1 under Article 227 were allowed by reason of the impugned judgment.

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 some forum. Having regard to the subsequent events, viz., correction of the revenue records in the year 2005 and keeping in view of 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.

Mr. Bijan Kumar Ghosh, learned counsel appearing on behalf of Respondent No. 1, on the other hand, supported the impugned judgment.

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

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.

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.

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

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

"\005If it was a 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 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 adjudicating thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so."

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

"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 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\005"

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.

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.

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.

We, therefore, do not find any merit in this appeal. However, before parting with this matter, we may only observe that although contention of Mr. Ghosh is that the civil suit was not maintainable in view of a decision of this Court in Laxmi Chand & Ors. v. Gram Panchayat, Kararia & Ors. [JT 1995 (8) SC 195], it is not necessary for us to express any opinion thereupon. We may furthermore place on record that a contention has been raised by Mr. Ghosh that the suit has been dismissed. We in this matter are not concerned with the correctness or otherwise of the said statement.

For the reasons aforementioned, the appeal is dismissed with costs. Counsel's fee assessed at Rs. 10,000/-.