

Therefore, the present suit is not barred by the principles of *res judicata*. There is no merit in the appeal and the same is dismissed with costs which are assessed at Rs. 5,000.

J.S.T.

Before : G. R. Majithia, J. and A. S. Nehra, J.

INDRAJ,—*Petitioner.*

versus

SHAMLAT DEH PATTI JATTAN, VILLAGE DADO RANGHRAN.
TEHSIL AND DISTRICT HISSAR THROUGH ITS SARPANCH AND
OTHERS,—*Respondents.*

Civil Revision 1861 of 89

6th August, 1992

Land Acquisition Act (E of 1894)—Section 30—Apportionment of compensation—Disputes regarding—Reference under S. 30—Court can add a person as a party who has not asked for reference—Such person must be entitled to apportionment of Compensation—Jurisdiction of Court to effectively and completely adjudicate upon and settle all questions involved is unfettered.

(Para 8, 10 & 12)

Niranjan Singh and others v. Amar Singh and others, 1984 PLJ 200 = A.I.R. 1984 Pb. & Hy. 250 overruled.

Held, that the Collector under section 30 of the Act is not enjoined to make a reference; he may relegate the person raising the dispute to agitate the same in a suit and pay the compensation in the manner declared by the award. If a person can be relegated to the remedy of a suit, there can be no bar for impleading him as a party in the reference for complete adjudication of the dispute relating to apportionment. Any other view would not advance the cause of justice.

Held, that a person who has not appeared in acquisition proceedings before the Collector can raise a dispute with regard to apportionment of compensation or relating to the person to whom it is payable and apply to the Collector for a reference under section 30 for determination of his right to compensation which may have existed before the award or which may have devolved upon him since the award and there is no limitation for making such an application, meaning thereby that the Collector can make more than one reference relating to apportionment to the Court. If the Collector can make more than

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one reference. It will be unjust to refuse permission to a party to join as a party to the reference. He may succeed in establishing his right to apportionment or may place the matter before the court which may enable the court to effectively and completely adjudicate the question of apportionment of compensation. The learned Judge also did not invite his attention to Order I, Rule 10(2) of the code, which provision is obviously applicable to the proceedings before the reference Court. These provisions enable the reference court to add a person as a party if his presence is considered necessary or proper for the proper adjudication of the dispute before it. Moreover, as observed in the earlier part of the judgment, the reference under Section 30 of the Act is really in the nature of interpleader suit and if that is so if a person *prima facie* establishes that he had a right which requires examination, it will be unjust not to implead him as a party to the reference. The view taken by the learned Judge cannot be accepted to be correct since it does not advance the cause of justice and put an end to multiplicity of proceedings. The same is accordingly overruled.

Held, that the Court which is seized of the reference under Section 30 of the Act can add a person as a party to the reference if it is established that he is entitled to apportionment of compensation. Revision Petition is disposed of accordingly.

Petition under Section 115 CPC of 1976 for revision of the order of Shri B. P. Jindal, Addl. District Judge, Hissar dated 9th May, 1989, dismissing the application.

Claim :—Application under order 1 Rule 10 C.P.C. in land Reference case under section 30 of the Land Acquisition Act, 1984.

Claim in Revision :—For the reversal of the order of lower Court.

The Hon'ble Mr. Justice G. C. Mittal during the Course of argument observed that there is apparent conflict of views in this case and this should be resolved by a larger Bench. The Division Bench consisting of Hon'ble Mr. Justice G. R. Majithia and Hon'ble Mr. Justice A. S. Nehra, decided the case finally on 6th August, 1992 and holding that the court which is seized of the reference under Section 30 of the Act can add a person as a party to the reference if it is established that he is entitled to apportionment of compensation.

S. D. Bansal, Advocate, for the petitioner.

O. P. Sharma, Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) Whether the Court to whom a reference under Section 30 of the Land Acquisition Act, 1894 has been made by the Land Acquisition Collector for apportionment of compensation can add a person

as a party who has not asked for a reference from the Collector is the question referred to us for determination.

The reference was necessitated because the learned Single Judge found that there was a conflict between Single Bench decisions of this Court reported as *Beer Singh v. Union of India and others* (1), on the one hand, and *Murti Shree Ram Chander Ji Maharaj v. State of Haryana, and another* (2), *Bagh Singh and others v. The Special Land Acquisition Collector, District Courts, Jalandhar and another* (3).

(2) Section 30 of the Land Acquisition Act, 1984 (the Act, for brevity) provides an alternative remedy for the Land Acquisition Collector for apportionment of compensation amount settled under Section 11 of the Act in complicated cases. He may himself decide the question of apportionment and complete his award as required by Section 11 leaving it to the parties to bring a reference under Section 18 in case they feel dissatisfied with his award. If they accept the award, he would no doubt record the same as contemplated in Section 29, but if he experiences any difficulty on the question of apportionment of compensation, he might act under Section 31 although he is not compelled to do so. A reference under section 30 is in the nature of an interpleader suit. The proceeding is a combination of as many suits as there are claimants and each claimant is both plaintiff and defendant. The proper procedure in such cases is the procedure which has been invariably followed by the Court as to call upon each claimant to file a statement of his claim-this statement would be his plaint. In answer to the claim thus made, the defendants, namely, the contesting claimants, would file statements-these would be their written statements. Then issue would be settled and the trial would proceed within the ordinary meaning. By virtue of Section 53 of the Act, the provisions of the Code of Civil Procedure, 1973 (for short, the Code) are made applicable to all proceedings before the Land Acquisition Court except where any provision of the Code would be inconsistent with the provisions of the Act. The rule is that the provisions of the Code apply to all proceedings before the Court. Exception to this rule is made by the provisions of the Act, which may be so inconsistent with the provisions of the Code so as to make them inapplicable to the proceedings before the Court under this Act. The Court under the Act means the Court as defined in Section 3(d) *ibid*. The provisions of Order I, rule 10(2) of the Code

(1) 1988 (2) L.L.R. 413.

(2) 1987 P.L.J. 131.

(3) 1984 (1) L.L.R. 59 (= 1984 P.L.R. 568.

relate to the impleading of the parties which are either necessary parties or proper parties. The Act does not exclude the applicability of this provision to the proceedings before the Land Acquisition Court. It is in this context that the question has to be answered whether a person can be added as a party whose presence the Court feels necessary for the proper adjudication of the dispute referred to it. There is conflict amongst various High Courts, but the preponderance of judicial pronouncements is that the reference Court can add a person as a party if it is satisfied that the dispute will be effectually and finally adjudicated upon.

(3) In *Kishan Chand v. Jagannath and another* (4), similar view was taken and it was held that in a reference under Section 30 of the Act the court hearing the reference has got ample jurisdiction to implead all the necessary or proper parties. In the course of the judgment, the learned Judge observed as follows :—

“We see no reason for restraining the wide language of Section 53 and the provisions of Section 32 of the Code of Civil Procedure appear to us to be in no way inconsistent with anything contained in Act No. I of 1984. To us it appears distinctly in the interest of all that the questions which arise as to compensation to be paid for a piece of land taken up should be dealt with as far as possible at one and the same time.”

In *Hashim Ibrahim v. Secretary of State* (5), it was held :

“In reference under the Land Acquisition Act the addition of parties is under certain circumstances permissible and it does not matter whether the subject of reference is one of valuation or of apportionment.”

(4) The same view was taken in *Indumathi Debi v. Tulsi Thakurani* (6), where B. K. Mukherjea and Roxburgh, JJ. held thus :—

“The jurisdiction of the Court in a reference made by the Collector under Section 30 is confined to a consideration of

(4) 1903 I.L.R. 25 Allahabad 133.

(5) A.I.R. 1927 Cal. 352.

(6) A.I.R. 1942 Cal. 53.

the dispute expressly referred to it by the Collector. An addition of parties may indeed be made when the persons who desire to be added as parties do not raise any new dispute but want to place other materials before the Court in connection with the dispute that is referred to it by the Collector."

(5) Relying upon these authorities, a Division Bench of the Kerala High Court in *Padmanabha Menon v. Bhaskara Menon and others* (7) :—

"So far as the court hearing a reference under Section 30 is concerned, by the express language of the Act itself the provisions of the Civil Procedure Code are made applicable, and therefore, we think, that under the provisions of Order I, rule 10, it is open to the Court to implead any person interested in the controversy pending before the Court provided the nature of the dispute referred is not enlarged or altered. The reference being for the determination of the question of apportionment of the compensation it is only proper that in appropriate cases persons who are interested in the property and of whose claims the Land Acquisition Officer may not have been aware should be added as parties for a final and effectual adjudication of the question referred."

(6) Again, in *Kalarikkal Lakshmikutty Amma v. Kankath Vettolil Kanhirapally Velappa Nair and another* (8), it was observed thus :—

"When Section 33, 3rd proviso has safeguarded the right of the real owner of the property to receive the compensation money when such a person has been directed to apply before the Court in which a reference as to apportionment is pending that is sufficient to confer jurisdiction in a reference under Section 32 of the Kerala Act to implead additional parties. If any jurisdiction is necessary this direction itself is a conferment of jurisdiction by the Land Acquisition Office to the Civil Court. The objection, therefore, raised to the impleading of the second respondent as additional party cannot, therefore, stand."

(7) 1963 Kerala Law Journal 724.

(8) A.I.R. 1973 Kerala 79.

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(7) In *Mt. Sakalbasi Kuer v. Brijendra Singh and others* (9), identical view was taken and it was held, thus :—

“Since no other procedure has been prescribed for a reference under Section 30 aid has to be taken of the provisions of the Code of Civil Procedure in that respect. There is nothing in the Act which is inconsistent with the application of the provisions of Order I, Rule 10, Code of Civil Procedure, in regard to a reference under section 30 of the Act. In that view of the matter, the Court had power to add a person as a party if it appears to the Court to be just to do so; and, particularly, if the Court finds that the presence of such a person may be necessary in order to enable it effectually and completely to adjudicate upon and settle all questions involved in the case. The Court below should have considered this aspect and decided whether the present petitioner has made-out a sufficient cause for being added as a party to the proceeding before it. On the facts of the case, there cannot be any doubt that she is a person interested in the land acquired and compensation determined.”

(8) A person raising a dispute relating to apportionment of compensation may apply to the Collector for reference to the Court under section 30 of the Act for determination of his right to compensation which may have existed before the award or which may have devolved upon him since the award. The Collector under Section 30 of the Act is not enjoined to make a reference; he may relegate the person raising the dispute to agitate the same in a suit and pay the compensation in the manner declared by the award. If a person can be relegated to the remedy of a suit, there can be no bar for impleading him as a party in the reference for complete adjudication of the dispute relating to apportionment. Any other view would not advance the cause of justice. A learned Single Judge of this Court in *Murti Shree Ram Chander Ji Maharaj v. State of Haryana and another* (10), made the following observations :—

“——If the question of apportionment between two persons had been referred under section 30 of the Act, it might have

(9) A.I.R. 1967 Patna 243.

(10) 1987 P.L.J. 131.

been possible for a third party to move an application under Order I, Rule 10, Civil Procedure Code, for getting himself to be impleaded. But, it would not be possible to entertain such an application when the scope of the application is confined to the proper market price only."

These observations indicate that the learned Judge opined that in a reference under Section 30 of the Act, a third party can be impleaded as a party to the reference.

(9) In *Beer Singh v. Union of India and others* (11), the learned Single Judge after referring to the various authorities, observed thus :—

"I think in view of the clear provisions of Section 53 of the Act, the provisions of Order I, Rule 10, Code of Civil Procedure, are clearly attracted to a case of reference under Section 30 before the Court when the nature of the dispute under reference does not change."

However, on facts, the learned Judge observed that the applicant who wants to be impleaded as a party to the reference should get his dispute settled in a civil Court. This direction was necessitated for the reason that the applicant was not heard of by his next kith and kins for seven years and this led to the attestation of mutation of inheritance in favour of his next kith and kin. The mutation order was challenged in civil suit and it was decided in favour of one set of heirs and this set of heirs were party to the reference under Section 30 of the Act. The civil Court held that Beer Singh was civilly dead. When an application was moved by an attorney of Beer Singh for impleading him as a party to the reference under Section 30, the reference Court declined to make him a party and directed him to get his title established from a civil Court. The learned judge, on merits, found that the order of the reference Court was correct in view of the peculiar facts of the case, but in matter of law he held that a third person can be added as a party to the reference under Section 30 of the Act. However, a discordant note was recorded in *Niranjan Singh and others v. Amar Singh and others* (12). The learned judge, after referring to the provisions of Sections 30 and 53 of the Act, observed thus :

"Proceedings before the Court on a reference made by the Collector under section 30 are of a special nature. The

(11) 1988 (2) I.L.R. 413.

(12) 1984 P.L.J. 200 (= A.I.R. 1984 Pb. & Hy. 250).

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Court can take cognizance of the dispute regarding apportionment of compensation of the acquired land, only on a reference and the enquiry is confined to a dispute between certain parties. The Court cannot enlarge its scope by impleading others as parties. *The persons who had not appeared before the Collector and staked any claim to compensation for the land in dispute, and have not raised any grievance as to the apportionment of compensation in the award of the Collector, cannot come forward to join issue before the Court adjudicating on the reference.*"

(Emphasis supplied)

(10) The words underlined indicate that the learned judge was of the opinion that the person who had not pressed for his claim before the Collector could not ask the reference Court to implead him as a party to the reference. While making these observations, the learned judge did not appreciate that no period is prescribed for getting a reference made under Section 30 of the Act. A person who has not appeared in acquisition proceedings before the Collector can raise a dispute with regard to apportionment of compensation or relating to the person to whom it is payable and apply to the Collector for a reference under Section 30 for determination of his right to compensation which may have existed before the award or which may have devolved upon him since the award and there is no limitation for making such an application, meaning thereby that the Collector can make more than one reference relating to apportionment to the Court. If the Collector can make more than one reference, it will be unjust to refuse permission to a party to join as a party to the reference. He may succeed in establishing his right to apportionment or may place the matter before the Court which may enable the Court to effectively and completely adjudicate the question of apportionment of compensation. The learned judge also did not invite his attention to Order I, Rule 10(2) of the Code, which provision is obviously applicable to the proceedings before the reference Court. These provisions enable the reference Court to add a person as a party if his presence is considered necessary or proper for the proper adjudication of the dispute before it. Moreover, as observed in the earlier part of the judgment, the reference under Section 30 of the Act is really in the nature of interpleader suit and if that is so, if a person *prima facie* establishes that he has a right which requires examination, it will be unjust not to implead him as a party to the reference. The view taken by the learned Judge cannot be accepted

to be correct since it does not advance the cause of justice and put an end to multiplicity of proceedings. The same is accordingly overruled.

(11) The view taken by a learned Single Judge of this Court in *Beer Singh v. Union of India and others* (13), is in accord with the one expressed in *Murti Shree Ram Chander Ji Maharaj v. State of Haryana and another* (14). However, a discordant note was recorded in *Niranjan Singh's case* (supra) which has been discussed in the earlier part of the judgment. While dictating the judgment, I found that there is no such reported decision of *Bhag Singh and others v. The Special Land Acquisition Collector, Jalandhar and another* (15), as mention in the reference order. However, there is a decision reported as *Bhag Singh and others v. The Special Land Acquisition Collector, Jalandhar and another* (16), rendered by late I. S. Tiwana, J. which came to my notice. In that case, the learned Judge opined that a person interested with reference to a particular land, which has been compulsorily acquired under the Act, can move the reference Court for impleading him as a party. The learned Judge was dealing with the petition with regard to the reference under Section 18 of the Act. The powers which are exercised by the Collector under Sections 18(1) and 30 of the Act are distinct and have to be invoked in certain contingencies. The judgment in *Bhag Singh's case* relates to a reference under Section 18 and not the one under Section 30 of the Act. The ratio of this judgment has no bearing to the facts of the instant case.

(12) We accordingly hold that the Court which is seized of the reference under Section 30 of the Act can add a person as a party to the reference if it is established that he is entitled to apportionment of compensation. Revision Petition is disposed of accordingly.

R.N.R.

(13) 1988 (2) I.L.R. 413.

(14) 1987 P.L.J. 131.

(16) A.I.R. 1984 Pb. & Har. 177.

(15) 1984 (1) I.L.R. 59.