

(2008) 02 BOM CK 0191

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 443 of 2006

Digambar Puded through G.P.A.
Dasrao Hambarde

APPELLANT

Vs

The State of Maharashtra, Land
Acquisition Officer, S.D.M.,
Vaalkunth Laxminarayan and
Satish Rakhewad

RESPONDENT

Date of Decision: Feb. 4, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Land Acquisition Act, 1894 - Section 18, 18(1), 18(2), 20, 30

Citation: (2008) 3 ALLMR 801 : (2008) 2 BomCR 517 : (2008) 3 MhLj 256

Hon'ble Judges: Naresh H. Patil, J

Bench: Single Bench

Advocate: K.G. Khader, for the Appellant; N.N. Jadhav, A.G.P. for Respondent No. 1 and Vivek Bawathankar, for the Respondent

Final Decision: Allowed

Judgement

Naresh H. Patil, J.

Rule returnable forthwith. At the stage of admission hearing, by an order dated 17th October, 2007 the notice was issued to the respondents for final disposal of petition at the admission stage.

2. The issue raised by the petitioner is whether provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short "C.P.C.") are applicable to the proceedings of reference u/s 18 and 30 of the Land Acquisition Act, 1894 (for short "the Act") by the Collector.

3. The learned Counsel Mr. Khader for the petitioner has placed reliance on reported judgments viz. (1) [Smt. Ambey Devi Vs. State of Bihar and another](#), (2) [Raghunath](#)

[Navde Vs. Pandit Navde and Others,](#) and has also referred to an unreported judgment delivered by this Court (Coram : S.B. Deshmukh, J.) dated 27th September, 2007 in Writ Petition No. 5468 of 2007 decided along with other group matters. 4. The land acquisition proceedings were initiated by Sub Divisional Officer and Land Acquisition Officer, Nanded in the year 1984, in respect of land Survey No. 122A, admeasuring 2 Hectares 60 Ares, situated at village Dhanegaon, Taluq and Dist. Nanded. The Special Land Acquisition Officer passed final award on 24/7/1997. There was dispute between claimants regarding entitlement of compensation. According to the petitioner, the dispute was referred to the Civil Judge (Senior Division), Nanded by Land Acquisition Officer, through a communication dated 24/12/1998 for adjudication. The Collector had also forwarded reference u/s 18 of the Act to the Civil Court.

4. The petitioner states that the respondent No. 3 Satish Shesheappa Rakhewad was not party to the reference made by the Collector u/s 18 of the Act. Considering the pendency of the references before the Civil Court forwarded by the Collector u/s 18 of the Act, the respondent No. 3 filed an application for impleading him as a party to the reference proceedings. The said application was objected by the petitioner. By an order dated 19/07/2003 the Joint Civil Judge (Senior Division), Nanded allowed the application filed by respondent No. 3 observing that the respondent No. 3 had some interest in the property acquired and it would be better to add him as a party without going into further merits of the matter.

5. The aforementioned citations relied upon by the petitioner clarify the position in law. It is observed by the Apex Court that the procedure prescribed under Sections 18 and 30 of the Act is inconsistent with the procedure prescribed under Order 1 Rule 10 of C.P.C. It was further observed that 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 u/s 18 and only on its receipt, u/s 20, Civil Court gets jurisdiction to issue notice and thereafter to conduct enquiry as contemplated under the Act. It was observed that at this stage the procedure of trial etc. as contemplated under the C.P.C. would apply and Section 53 of the Act would become applicable.

6. In the light of the settled legal position, I am of the opinion that the view adopted by the trial Court is erroneous and, therefore, the impugned order needs to be quashed and set aside.

7. The petition stands allowed. The impugned order dated 19/07/2003 passed by Joint Civil Judge (Senior Division), Nanded in L.A.R. No. 108 of 1998 is quashed and set aside.

8. Respondent No. 3 is entitled to prosecute independent remedies for raising his grievances and pleas. The outcome of this petition shall not affect the rights of respondent No. 3, if any.

9. Rule made absolute in above terms.