SUPREME COURT OF INDIA

Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen

Vs.

Syed Zindasha

C.A.No.1119 of 2009

(S.B. Sinha and V.S. Sirpurkar JJ.)

19.02.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Applicability of the provisions of Order I Rule 10 of the Code of Civil Procedure (the Code) in a proceeding under Section 18 of the *Land Acquisition Act, 1898* (the `Act') is in question in this appeal which arises out of a Judgment and Order dated 8-11-2006 passed by a learned Single Judge of the Madras High Court, Madurai Bench, Madurai in Civil Revision Petition (P.D.) (M.D.) No. 743 of 2006.

3. Appellant claims himself to be a Muthavalli of Sha Madhari Diwan Wakf. The said properties were acquired by the State of Tamil Nadu in terms of the provisions of `the Act'. Appellant as a `person interested' took part in the proceedings for making an award. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Collector, he sought for a reference for enhancement thereof pursuant whereto and in furtherance whereof the Collector of the District made a reference to the Civil Court. The said reference was transferred to the Court of Second Additional Subordinate Judge, Tiruchirappalli by the learned District Judge. Prior thereto, a suit for recovery of possession of certain properties and damages was instituted by the father of the appellant No.2 herein against Haji Syed Zehrudin @ Jana Basha Alisha Sadguru in the court of the Munsif, Tiruchirappalli which was marked as O.S. No.649 of 1986.

4. The said suit was decreed holding that the properties in question were Wakf properties and the plaintiff therein was the Muthavalli thereof. Haji Syed Zehrudin preferred an appeal thereagainst. The said appeal was dismissed. A second appeal preferred thereagainst marked as S.A. No.488 of 2000 was also dismissed holding that once the property had been dedicated to Wakf, no question of joint ownership of the properties by the individuals in respect thereof would arise.

5. Appellant No. 2 is said to have been appointed as a temporary Muthavalli of the Wakf. By an order dated 9-04-2002, the matter relating to appointment of a permanent Muthavalli was said to have been kept in abeyance.

6. In the reference proceedings, marked as L.A.O.P. No.18 of 2005, the first respondent filed an application for getting himself impleaded as a party therein contending that he was interested in the subject matter of a part of the property acquired, being the property described in Schedule `B' in O.S. No. 305 of 1951 as in the judgment rendered therein it was allegedly held that the same should be treated as common properties and that certain religious obligations were to be performed from its income and the balance to be divided amongst the co-sharers. It was furthermore alleged that the second appellant who was in-charge of the management of the said property had not discharged the duties cast upon him. Several other contentions with which we are not concerned herein were also raised.

7. A copy of the said application was served upon the counsel for the parties. It is interesting to note that whereas the learned counsel appearing for the appellant therein made an endorsement, `Taken Notice. Prays for time for filing counter', the learned Government pleader, while taking notice is said not to have received `no objection' pursuant whereto and in furtherance whereof alone, the learned Second Additional Subordinate Judge by an order dated 21-10-2005 directed : "Petition filed by the Petitioner under Order 1 Rule 10 (2) and Section 151 CPC prays to impleading the person namely S.J. Syed Zindasha, S/o. Syed Jaffar Hussain, 32, Heber Road, Palakkarai, Tiruchy 1 as 5th Respondent in the above petition. 2) Notice to Respondent counsel and reports no objection and hence the petition is allowed without costs."

8. A revision application was filed thereagainst which has been dismissed by reason of the impugned Judgment. It is now not in dispute that a review application was also filed which was dismissed by the Learned Additional Subordinate Judge by an order dated 31-01-2006. We may also notice that in his order the learned Judge opined as under: "The main contention of the Petitioner is that the formal party is an unnecessary party he cannot be impleaded in I.A. No. 328 of 2005 even though the Petitioner prayed time for counter to the shock and surprise implead petition was allowed. Therefore he filed this petition to review the order passed in I.A. No. 328 of 2005. In this case the main contention of the newly impleaded party is that he is also one of the sharers in the acquisition land. On this aspect there is no clear-cut findings this court at this stage whether the impleaded parties are entitled any share. It can be decided only after let in evidence by the both parties, without impleading the newly added parties, therein cannot be a proper and binding adjudication in this case. Therefore there is no question for reviewing the order passed in I.A. No. 328 of 2005 whether the third party newly added party or unnecessary party it can be decided at the time of enquiry. Hence there is no question of review the order passed in I.A. No. 328 of 2005 arise at this stage. Hence this petition is dismissed without costs."

9. Mr. V. Prabhakar, learned counsel appearing on behalf of the appellants would contend : (1) Having regard to the fact that the civil court had held the property to be a Wakf property and the first appellant to be Muthavalli thereof, Respondent No. 1 could not have been

directed to be impleaded as a party in the reference proceeding. (2) A reference by the Collector to the Civil Court having been made in terms of Section 18 of the Act and not in terms of Section 30 thereof, the application for impleadment was not maintainable. (3) The provisions of Order I, Rule 10 of the Code, keeping in view the nature of the proceeding, have no application in a reference made in terms of Section 18 of the Act. (4) The learned Reference Judge and consequentially the High Court committed a serious illegality in passing the impugned order as the dispute raised by the respondent in his application is beyond the scope of the reference.

10. Mr. K.K. Mani, learned counsel appearing on behalf of the respondents, on the other hand, would contend : (1) The order for impleadment of the first respondent having been passed on consent, this court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India. (2) Appellants, having filed a revision application only against the main order and not against the order of the review, this special leave petition is barred under the principle of res-judicata. (3) There exists a distinction between a proper party and a necessary party. Although in the proceeding under Section 18 of the Act, apportionment of the amount of compensation is not in question, it is necessary that the reference be determined in the presence of the appellant and, thus, the respondent is a proper party to the reference proceedings.

11. `The Act' is a self-contained code. It not only provides for the mode and manner in which the acquisition proceedings are initiated but also the mode and manner in which the proceedings for making an award as also the mode and manner in which an application for reference by a person dissatisfied therewith is to be made.

12. A reference may be prayed for by a person interested in the proceeding. Ordinarily, he should be a party to the proceedings for making an award. He has to file an application for making a reference before the Collector of the District within the time specified thereunder. Such an application must be in writing and the reference to the civil court which may be prayed for before the Collector would be in regard to his objection as regards measurement of land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation amongst the persons interested. The Reference was made only in respect of the amount of compensation. No reference has been made in regard to the right of persons to whom it was payable or apportionment of compensation amongst the persons interested. The claim of the first respondent has been noticed by us. He has laid his claim on the title of the property. He has prayed for proper and effective implementation of the decree passed by a civil court. He alleged mismanagement of the Wakf property by the first appellant.

13. A reference court is not a court of original jurisdiction. It derives jurisdiction only in terms of the order of reference. The Act being a self- contained code, the manner in which the reference is to be made and the statement required to be made by the Collector has been specified in Section 19 of the Act. The lis between the parties to the reference meaning thereby a person interested and the State is with regard to the quantum of compensation. No other question can be raised therein. The reference court exercises a limited jurisdiction. It derives its jurisdiction from the terms of reference. Even otherwise a civil court can direct

impleadment of a third party in a suit only in a case where he is a proper or necessary party and otherwise have an interest in the subject matter of the suit. Even civil court ordinarily would not entertain a petition for impleadment of a third party in a lis pending before it which would enlarge the scope and ambit of the dispute between the parties. A Civil Court would also not ordinarily implead a third party as a result whereof fresh dispute(s) either amongst the plaintiffs inter se claiming under the same title or the inter se between the defendants would be required to be determined.

14. In the event there is a dispute with regard to the title or apportionment of the amount of compensation, a proper reference has to be made. Only when such a reference is made, the dispute between the claimant can be gone into and not in a reference proceeding of the nature referred to by the collector in the instant case.

15. In *Kothamasu Kanakarathamma and others v. State of Andhra Pradesh and Ors.*[1], this court held : "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 v. Meer Mynoodeen Khan wullud Meer Sudroodeen Khan Bahadoo*[2] at p. 155 (PC) 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."

16. This court furthermore in *Ambey Devi v. State of Bihar and Anr.*[3] held that the provisions of Order I Rule 10 of the Code have no application in a land acquisition proceeding, stating: "The procedure prescribed under Sections 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 the civil court gets jurisdiction to issue notice and thereafter to conduct enquiry." In this view of the matter, the impugned judgment suffers from several legal infirmities.

17. The learned Additional Subordinate Judge furthermore committed a serious error in allowing the application for impleadment filed by the first respondent on the premise that the appellant had no objection thereto. Endorsement of no objection was made by the counsel for the State. Evidently, the State was not interested in a dispute by and between the appellant and the first respondent. Appellant's counsel while taking notice of the application categorically stated that a counter affidavit is required to be filed. Thus an endorsement of `no objection' made by or on behalf of the counsel for the state could not have been put in use against the appellant by the learned judge.

18. In any view of the matter, it is well settled that no amount of consent can confer jurisdiction on a court when it has none. If the court had no jurisdiction, any order passed by it is a nullity. When the court lacks inherent jurisdiction, the procedural provision of estoppel, waiver or res- judicata shall also not apply. {[[See *Chief Justice of Andhra Pradesh & Ors. v. L.V.A. Dikshitulu & Ors.*[4] *and Chandrabhai K. Bhoir and Ors. v. Krishna Arjun Bhoir and Ors.*[5]}.

19. In view of our findings aforementioned, we are of the opinion that the principles of res-judicata in a situation of this nature will also have no application. In any event, it is not a case where two suits were filed and the appellants had preferred appeal/revision against one of them and failed to question the other order. Appellants herein had even filed a review application prior to filing of the revision application. An application to review lies on a limited ground. The main order being subject matter of challenge and the same having been affirmed, the special leave petition thereagainst is maintainable.

20. The contention of Mr. Mani that the first respondent is otherwise a proper party if not a necessary party for the reasons stated hereinbefore has also no force.

21. The impugned order, therefore, is set aside. The appeal is allowed with no order as to costs.

[1][AIR 1965 SC 304] [2]6 Moo Ind App 134 [3][1996 (9) SCC 84] [4][AIR 1979 SC 193 at 198] [5][2008 (15) SCALE 94]