



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 225 of 2017.

Date of decision: 01.05.2019.

Dinesh Kumar

.....Petitioner.

Versus

**Bachna Ram(now deceased)
through his LRs Uma Devi and
others.**

.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?¹ Yes

**For the Petitioner : Mr. Ashwani K. Sharma, Senior
Advocate with Mr. Jeevan Kumar,
Advocate.**

**For the Respondent : Mr. Romesh Verma, Advocate,
for respondents No.1(a) to
1(c).**

**Mr. Vinod Thakur and Mr.
Sudhir Bhatnagar, Additional
Advocate Generals with Mr.
Bhupinder Thakur, Deputy
Advocate General and Mr. Ram
Lal Thakur, Assistant Advocate
General, for respondent No.3.**

**Mr. Aditya Thakur, Advocate,
for respondents No. 5 to 9.**

¹*Whether the reporters of the local papers may be allowed to see the Judgment?Yes*

Tarlok Singh Chauhan, Judge (Oral).

This revision petition is directed against the order passed by the learned reference Court whereby he rejected the application of the petitioner seeking his impleadment in the reference proceedings.

2. No fault can be found with the order passed by the reference Court as the same has been passed strictly in consonance with law and in tune with the judgment passed by the Hon'ble Supreme Court in ***Ramji Gupta & Anr. versus Gopi Krishan Agrawal(D) & Ors., 2013(2) Civil Court Cases 668=2013 (9) SCC 438*** wherein it has been unequivocally held that the reference Court does not have the power to entertain an application under Order 1 Rule 10 CPC. It was further held that a person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the Land Acquisition Act, 1894, cannot get himself impleaded directly before the reference Court. This is evidently clear from the following observations of the Hon'ble Supreme Court contained in paragraphs 28 to 32 which read thus:-

"28. In the instant case, we have to bear in mind that the proceedings stood concluded so far as the court

of first instance is concerned, and that the respondent was not the party before the said court. Permitting an application under Order IX Rule 13 CPC by a non-party, would amount to adding a party to the case, which is provided for under Order I Rule 10 CPC, or setting aside the ex-parte judgment and decree, i.e. seeking a declaration that the decree is null and void for any reason, which can be sought independently by such a party. In the instant case, as the fraud, if any, as alleged, has been committed upon a party, and not upon the court, the same is not a case where Section 151 CPC could be resorted to by the court, to rectify a mistake, if any was made.

29. The matter basically relates to the apportionment of the amount of compensation received for the land acquired. This Court, in *May George v. Special Tahsildar & Ors.*, (2010) 13 SCC 98, has held, that a notice under Section 9 of the Act, 1894, is not mandatory, and that it would not by any means vitiate the land acquisition proceedings, for the reason that ultimately, the person interested can claim compensation for the acquired land. In the event that any other person has withdrawn the amount of compensation, the "person interested", if so aggrieved, has a right either to resort to the proceedings under the provision of Act 1894, or he may file a suit for the recovery of his share. While deciding the said case, reliance has been placed upon a large number of judgments of this Court,

including *Dr. G.H. Grant v. State of Bihar*, AIR 1966 SC 237.

30. The said case is required to be examined from another angle. Undoubtedly, the respondents did not make any application either under Section 18 or Section 30 of the Act, 1894 to the Land Acquisition Collector. The jurisdiction of the Reference Court, vis-à-vis "persons interested" has been explained by this Court in *Shyamali Das v. Illa Chowdhry & Ors.*, AIR 2007 SC 215, holding that the Reference Court does not have the jurisdiction to entertain any application of pro interesse suo, or in the nature thereof. The Court held as under:

"The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also to 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. His jurisdiction is to determine adequacy and otherwise of the amount of compensation paid under the award made by the Collector". Thus holding that, "It is not within his domain to entertain any application of pro interesse suo or in the nature thereof."

The plea of the appellant therein, stating that the title dispute be directed to be decided by the Reference Court itself, since the appellant was not a person interested in the award, was rejected by this Court, observing that the Reference Court does not have the power to enter into an application under Order I Rule 10 CPC.

31. In *Ajjam Linganna & Ors. v. Land Acquisition Officer, RDO, Nizamabad & Ors.*, (2002) 9 SCC 426, this court made observations to the effect that it is

not open to the parties to apply directly to the Reference Court for impleadment, and to seek enhancement under Section 18 for compensation.

In *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran & Anr.*, (2003) 5 SCC 561, this Court held as under:

"It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or Section 30 of the Act by the Land Acquisition Officer and if the 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."

While deciding the said case, the Court placed reliance on the judgments in *Parmatha Nath Malik Bahadur v. Secretary of State*, AIR 1930 PC 64; and *Mohammed Hasnuddin v. The State of Maharashtra*, AIR 1979 SC 404.

(See also: *Kothamasu Kanakarathamma & Ors. v. State of Andhra Pradesh & Ors.*, AIR 1965 SC 304)

It is evident from the above, that a person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the Act, 1894, cannot get himself impleaded directly before the Reference Court.

32. In view of the above, the legal issues involved herein, can be summarised as under:-

- (i) An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings;
- (ii) Inherent powers under Section 151 CPC can be exercised by the Court to redress only such a

grievance, for which no remedy is provided for under the CPC;

(iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit.

(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court."

3. Consequently, there is no merit in this revision petition and the same is dismissed, leaving the parties to bear their own costs. However, such dismissal shall have no bearing on merits of the civil suit that has been instituted by the petitioner and the appeal whereof pending adjudication before the learned Additional District Judge, Nalagarh.

4. In view of the dismissal of the revision petition, the interim order dated 20.11.2017 is vacated.

5. The parties through their counsel are directed to appear before the reference Court on **15.05.2019.**

1st May, 2019.
(krt)

(Tarlok Singh Chauhan)
Judge

High Court of HP