

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP. No.63 of 2022

The State of Tripura & Others

.....Petitioners

_V_E_R_S_U_S_

Smti. Sarojini Chakma & Another

.....Respondents

For Petitioner(s)	:	Mr. D. Bhattacharjee, G.A. Mr. A. Das, Advocate.
For Respondent(s)	:	Mr. S. M. Chakraborty, Sr. Advocate. Mr. B. Majumder, Advocate. Mr. G.S. Bhattacharjee, Advocate.
Reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_F_I_N_A_L_O_R_D_E_R_

27/07/2023

Heard Mr. D. Bhattacharjee, learned G.A. assisted by Mr. A. Das, learned counsel appearing for the petitioners. Also heard Mr. S. M. Chakraborty, learned senior counsel, Mr. B. Majumder, learned counsel, Mr. G. S. Bhattacharjee, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-227 of the Constitution of India read with Section-151 of CPC for setting aside the orders dated 07.04.2022, 16.04.2022, 20.04.2022 and 26.04.2022 passed in Civil Misc (Execution) 01 of 2019 arising out of Civil Misc (L.A) 27 of 2008 by the learned District Judge (L.A. Judge), Dhalai Ambassa, Tripura.

[3] The facts in brief are that the respondents filed execution petition for realization of the awarded amount in L.A. 27 of 2008 before the learned District Judge, Dhalai. The learned Court below thereafter heard both the side and passed an order for attachment of property of the petitioner herein, to satisfy the award on 16.04.2022. On 26.04.2022, the petitioner herein, submitted 2 numbers of cheques amounting to Rs.44,32,277/- and Rs.5,71,859/- respectively for realization of the award. On 07.04.2022 the respondent No.1 submitted the calculation sheet which stands comes to Rs.62,12,838/-, the learned Court accepted the calculation sheet calculating the 30% over the total awarded amount. The petitioners herein submitted one calculation sheet before the learned Executing Court on 19.04.2022

categorically stating that 30% solatium are extended towards the land not the building which is also recorded in the connected L.A. Appeal. The learned Court passed an order on 10.05.2022 for releasing the said deposited amount from the petitioner.

[4] Hence, the present petition has been filed by the petitioners before this Court for redress.

[5] After hearing the parties and having observed the material evidence on record, the learned Court below vide order dated 07.04.2022 has observed thus:

“Under the above facts and circumstances, the calculation sheet dated 13-01-2021 claiming to get an amount of Rs. 62, 12, 838/- (Rupees Sixty two lakhs twelve thousand eight hundred thirty eight only) submitted on behalf of the claimant-petitioner is accepted and for fair ends of justice, the Judgment-debtor No. 1, i.e., the LA Collector, Dhalai District, Ambassa is hereby directed to make payment of arrear compensation to the decree-holder within the next fifteen days along with interest and soletium under Sections 23(2)/23(1A) and 34 of the LA Act on the amount shown in the calculation sheet dated 13-01-2021 submitted by the decree-holder.

The decree-holder shall have liberty to take appropriate step in case of failure on the part of the Judgment-debtor.

A copy of this order be furnished to the learned counsel of both the parties free of cost.

A cheque bearing No. 011284, dated 08- 03-2022 amounting to Rs. 1, 22, 851/- (Rupees One lac twenty two thousand eight hundred fifty one) only is returned to the learned counsel appearing for the Judgment-debtor No. 2 after obtaining proper receipt on the margin of the order sheet as inadvertently the cheque was issued in favour of LA Judge Ambassa Dhalai Tripura instead of Land Acquisition Judge Dhalai Judicial District Ambassa.”

[6] The learned Court below vide order dated 16.04.2022 has observed thus:

“On perusal of the case record, it is revealed that this court on 07-04-2022 passed an order giving direction to the Judgment-debtor No. 1 i.s. the LA Collector, Dhalai District, Ambassa to make payment of arrear compensation of Rs. 62, 12, 838/- (Rupees Sixty two lecs twelve thousand eight hundred thirty right) only to the decree-holder under Sections 22(2)/23(1A) and 34 of the LA Act by today. But today the Judgment-debtor No. 1 only deposited Rs. 1, 22, 851/- (Rupees One lakh twenty two thousand eight hundred fifty one) only through a cheque as stated above and remained silent about the arrear compensation [Rs. 62, 12, 838 (minus) Rs. 1, 22, 851/-) Rs. 60, 89, 987/- (Rupees sixty lacs eighty nine thousand nine hundred eighty seven) only. Requiring Department (Judgment-debtor No. 2) sought for time of one month for payment, whereas, in an execution case this have nothing to do with the

requiring department, and as such, non-payment of arrear as per order dated 07-04-2022 is nothing, but a serious non-compliance and disobedience of the order of this Court.

Consequently, it is hereby ordered to issue writ upon the Judgment-debtor No. 1, LA Collector for attachment of the movable and non- movable properties of the LA Collector for realization of the arrear compensation.

An application under Order XXI Rule 43, 13 of the Code of Civil Procedure is filed on behalf of the decree-holder describing the names of the properties belonging to the Judgment-debtor No. 1 for attachment of the said movable and immovable property of the LA Collector for realization of the arrear compensation as awarded in view of the order of the Hon'ble High Court and accepted by this court vide order dated 16-03-2022.

Another application under Rule 203 of the Civil Courts Rules and Orders is filed on behalf of the decree-holder for passing necessary order for providing one Sub-Inspector, two male armed constables/TSR personnel and two women constables to assist the Bailiff at the time of execution of the decree.

Along with the aforesaid two applications, three nos. of writ are submitted on behalf of the decree-holder for execution of the said writs by bailiff.

Perused the writ and keep the writs with the case record.

Heard learned counsel for the decree- holder and considered.

The prayer of the decree-holder is allowed and it is hereby ordered that presence of one Sub-Inspector, two male armed constables and two women constables are required to assist the Bailiff for execution of the decree and the expenditure for the police assistance will be borne by the decree-holder.

The SP, Dhalai District, Ambassa is directed to provide necessary information to this Court by the next two working days regarding one day's salary of one Sub-Inspector, two male armed constables and two women constables along with DDO's Treasury code number.

Send a copy of this order to the SP, Dhalai for information and compliance.

Office is directed to issue the writ if filed properly on receipt of the information regarding one day's salary of the police personnel mentioned above from the SP, Dhalai District, Ambassa.”

[7] The learned Court below vide order dated 20.04.2022 has observed thus:

“Timely justice is now a slogan and Judgment in belated stage is nothing but some stray papers without any use. This Court is constrained to express its agony that a destitute lady who lost her land and building and came on road and now living in distress and the LA Collector did not show any proactive approach to address her issue in the mean time, rather all measures were adopted on their part since 2004 till date to frustrate her claim and demand and the justice given to her. Thus this Court thinks that non-compliance and callus attitude of LA Collector, Dhalai should be dealt with very seriously.

Accordingly, refer the order in the instant proceeding to the Hon'ble High Court of Tripura for consideration to draw a contempt proceeding against LA Collector, Dhalai.

Office is directed to communicate all orders inclusive of the orders dated 07-04-2022 and 16-04-2022 passed by this Court and the order and Judgment passed by the Hon'ble High Court of Tripura dated 29-05-2017 in LA APP No. 29 of 2011 connection with this proceeding to the Registry of the Hon'ble High Court of Tripura for doing the needful.

In the light of above, issue the writ of attachment at once for execution.

Bench Section is directed to inform the Bailiff immediately to cause the execution and to submit a detailed report of execution with inventory.

SP, Dhalai is directed to deploy at once a Sub-Inspector of Police with two armed male Constables and two women Constables to assist the Bailiff.

Send a copy of this order immediately to SP, Dhalai for strict compliance.”

[8] The learned Court below vide order dated 26.04.2022 has observed thus:

“In the mean time report from Bailiff is also received along with the writ.

Also keep the same with the case record. Received two nos. of cheques bearing No. 031350, dated 20-04-2022 and 040052, dated 26-04-2022 drawn upon Tripura State Co-operative Bank Limited, Jawaharnagar Branch for Rs. 44, 32, 2771/- (Rupees Forty four lacs thirty two thousand two hundred seventy seven) only and Rs. 5, 71, 859/- (Rupees Five lacs seventy one thousand eight hundred fifty nine) only in favour of the LA Judge, Dhalai Judicial District, Ambassa towards the full satisfaction of the award.

Send the cheque bearing No. 031350, dated 20-04-2022 for Rs. 44, 32, 2771/- (Rupees Forty four lacs thirty two thousand two hundred seventy seven) only and the cheque bearing No. 040052, dated 26-04-2022 for Rs. 5, 71, 859/- (Rupees Five lacs seventy one thousand eight hundred fifty nine) only to the Nazir of this establishment along with a copy of this order for encashment of the said amounts in the account of the LA Judge, Dhalai Judicial District, Ambassa.”

[9] Being aggrieved by and dissatisfied with the impugned orders dated 07.04.2022, 16.04.2022, 20.04.2022 and 26.04.2022, the petitioner herein, preferred this revision petition before this Court.

[10] Mr. D. Bhattacharjee, learned G.A. appearing for the petitioner has submitted that the learned Court below has failed to appreciate the provision of law as well as the fact of the case while passing the impugned order. The Court below has failed to appreciate that 30% solatium and 12% interest are to be calculated only on the 1st factor of Section-23(1) of L.A. Act i.e. only the market

value of the land not on other factors and thereby comes to an erroneous calculation which is required to be interfered with.

[11] It has been further contended that the learned Court below has further held that the solatium calculated by the respondent No.1 on the entire part of the land with structure is completely by passing the statutory provision and direction of this Court and therefore the acceptance of the calculation sheet dated 07.04.2022 is required to be interfered with. The calculation of the respondent No.1 ought to have rejected and therefore, the consequential orders dated 16.04.2022, 20.04.2022 and 26.04.2022 are bad in law and liable to be set aside.

[12] There is no dispute that the land comprised in CS plot No.50/3509 is the land on which the building is situated. It has been categorically stated that the total land that has been acquired from the respondent is 16 acres. When the commissioner's report is not in dispute, this Court does not have any hesitation to hold that the building under reference is situated. From the description as provided by the commissioner, it appears that the entire building was situated on the said plot. The chartered engineer has calculated the cost of constructing such building on 21.08.2009. According to the said report, cost of the construction would be on that day is Rs.14, 58,773 on deduction of the depreciation. Since the construction had started in the year 1993 and it was completed in the year 1999 and the land was acquired in the year 2004, the depreciation shall be calculated for clear 5 years. The rate of depreciation should be 5% per year. Thus, for the 5 years the depreciation must be more than 25% from the total estimated cost. Out of Rs.16,53,000-25% shall be deducted thus, Rs.4,13,250/- shall be deducted.

[13] The value of the building, therefore, would be Rs.12,39,750/-. From the said amount Rs.1,00,000/- further be adjusted as the Land Acquisition Collector had, as noticed, awarded for the said construction. Thus, the total value of the construction, what has to be payable is Rs.11,39,750/-. Therefore, the respondent would be entitled to have the cost of Rs.12,39,750/-. From that amount, as it is stated, Rs.1,00,000/- has been paid in terms of the award of the L.A. Collector thus, the same amount shall be adjusted. Since, the construction stands in the land in question, they are entitled to the same. Accordingly, the order passed by the learned Court below requires no interference and thus, the same stands

allowed and disposed of. Consequently, the present petition stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

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