

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.30/2024

The Agartala Municipal Corporation

..... Petitioner(s).

V E R S U S

Sri Samar Kumar Bhaumik & another

.....Respondent(s).

CRP No.31/2024

The Agartala Municipal Corporation

..... Petitioner(s).

V E R S U S

Sri Samar Kumar Bhaumik & another

.....Respondent(s).

For Petitioner(s)	: Mr. Arijit Bhaumik, Advocate, Mr. Soumyadeep Dey, Advocate.
For Respondent(s)	: Mr. Dipankar Sarma, Addl. G.A., Mr. P. Rathor, Advocate, Mr. D.C. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

27/06/2024

Heard Mr. Arijit Bhaumik, learned counsel for the petitioner in both the petitions, and Mr. P. Rathor, learned counsel for the respondent No.1 who is the decree holder. Also heard Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondent No.2, the Land Acquisition Collector, Agartala, West Tripura.

2. CRP No.30 of 2024 has been preferred by the Corporation against the order dated 16.01.2024 passed in Ex(M) No.01 of 2018 by the learned Executing Court where the learned Executing Court had taken up the matter again and observed that no steps have been taken by the judgment debtor No.1. In CRP No.30 of 2024 and CRP No.31 of 2024, learned counsel for the

Corporation has also laid a challenge to the subsequent orders dated 28.02.2024 passed in Ex(M) No.01 of 2018 and Ex(M) No.02 of 2018 respectively whereby both the cases were posted for hearing once again on 15.05.2024.

3. Learned counsel for the petitioner has submitted that the execution cases were disposed of on satisfaction of the award. The learned Court had become *functus officio* and the matter has been revived once again though no such application to that effect has been made. Learned counsel for the petitioner submits that in CRP No.27 of 2023 arising out of the order dated 20.12.2022 passed by the same Executing Court in same execution case bearing No.Ex(M) 02 of 2018, this Court had observed that the Executing Court should take a decision on the issue of due execution of the award taking into account the computation prepared under the signature of Land Acquisition Officer and Land Acquisition Collector, West Tripura which was prepared reckoning the date of possession as 23.12.2010 but after hearing the parties. This Court had also observed that it has not expressed any opinion on the issue of satisfaction of the award by the judgment debtor and observations, if any, made thereinabove were only intended to effectively ensure that the Executing Court takes a firm decision in a timeframe after hearing the parties and taking into account the materials already on record as regards the proper execution of the award in question.

4. It is submitted that on a similar issue, the order passed by this Court in CRP No.26 of 2023 arising out of an execution case bearing No. Ex(M) 01 of 2018 was made subject matter of challenge by the decree holder in Special Leave Petition (Civil) Diary No(s).46658/2023. The Hon'ble Apex

Court vide order dated 24.11.2023 did not interfere in the matter. It has observed that the High Court had only remanded the matter and directed a decision to be taken after hearing the parties in a timeframe without expressing any opinion on the merits of the case. The Special Leave Petition was disposed of with an observation that the Executing Court on the basis of the evidence led before it by the parties, would be required to take a decision as to whether the effective date of possession is 13.01.2009 or 23.12.2010.

5. Learned counsel for the petitioner submits that earlier pursuant to the order dated 12.08.2022 passed in CRP No.61 of 2022, the learned Executing Court had vide order dated 20.12.2022 clearly held that the possession was taken over on 23.12.2010. As such, revival of the execution case which was disposed of on satisfaction of the decree by the impugned orders is erroneous.

6. On notice, the respondent/decreed holder has appeared through learned counsel Mr. P. Rathor. Learned counsel for the respondent/decreed holder submits that the Apex Court has observed that the High Court has only remanded the matter and directed that a decision be taken after hearing the parties on the issue. It has also observed that the Executing Court on the basis of the evidence led before it by the parties would be required to take a decision as to whether the effective date of possession is 13.01.2009 or 23.12.2010. Therefore, there is an obligation on the Executing Court to take a decision on this issue. As such, both the revision petitions are not entertainable. The Executing Court is only bound to abide by the observations made by the Apex

Court. As such, any such plea against the revival of the execution cases is not tenable in law.

7. On consideration of the rival submission of the parties and after having taken note of the facts and circumstances placed by the learned counsel for the parties, this Court is of the considered opinion that in view of the observations made by the Apex Court in the order dated 24.11.2023 in Special Leave Petition (Civil) Diary No(s).46658/2023 which arose out of the order dated 05.07.2023 in CRP No.26 of 2023 passed by this Court, the Executing Court is required to take a decision on the effective date of possession, i.e. 13.01.2009 or 23.12.2010.

8. In view of the observations and directions made by the Apex Court and the duty cast upon the Executing Court thereby to decide on the effective date of possession, the present revision petitions cannot be entertained.

Learned counsel for the parties are at liberty to place their cases before the Executing Court on this issue.

Accordingly, both the revision petitions are dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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