

THE HON'BLE SRI JUSTICE A.V. SESA SAI

C.R.P.No.655 of 2014

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ORDER:

This revision, filed under Article 227 of the Constitution of India by the respondents 3 to 7 in O.P.No.59 of 2006, calls in question the order dated 29-10-2013, passed by the learned Senior Civil Judge, Peddapalli, dismissing the I.A.No.1064 of 2013 filed under the provisions of Order XVIII Rule 17 of C.P.C., praying the Court to recall PW-1 for cross-examination.

Heard Sri P.V. Narayana Rao, learned counsel for the petitioners and Sri B. Sudhakar Reddy, learned counsel for the respondents.

In O.P.No.59 of 2006, the petitioners herein filed I.A.No.1064 of 2013 under the provisions of Order XVIII Rule 17 C.P.C., seeking to recall PW-1 for cross-examination. The said application was resisted by the respondents by filing a counter. The learned Senior Civil Judge, by way of an order dated 29-10-2013, dismissed the said application. Aggrieved by the said order passed by the learned Senior Civil Judge, the present C.R.P. has been filed.

It is contended by the learned counsel for the petitioners that petitioner No.2 herein passed away during the pendency of O.P.No.59 of 2006 and he was looking after the proceedings in the OP. It is further submitted that further cross-examination of PW-1 is necessitated, in view of the documents in Exs.B-1 to B-54 and the documents filed by the 1st respondent, i.e. Exs.A-1 to A-12. It is further

submitted by the learned counsel for the petitioners that the order passed by the Court below is erroneous, contrary to law and is opposed to the very spirit and object underlying the provisions of Order XVIII Rule 17 C.P.C.

A perusal of the order passed by the Court below shows that the learned Senior Civil Judge dismissed the application mainly on the ground that the petitioners herein failed to mention the specific points. The dispute in the present O.P arises under Section 30 of the Land Acquisition Act (for short 'the Act'). In the judgment cited by the learned counsel for the petitioners,

in **Mohd. Hussain Khan and others v. National Insurance Co.Ltd.,**

Nanded, ^[1] this Court held that under Order XVIII Rule 17 of C.P.C. the Court may at any stage of the proceedings recall any witness and there is no embargo that the Court has no right to recall a witness after the evidence is closed. It was further held that even after the closure of the evidence of the plaintiff or the defendants, or both parties, the parties may approach the Court to reopen the case for further evidence and it is the discretion of the Court to allow any application filed under Order XVIII Rule 17 C.P.C. However, the discretion has to be exercised having regard to the facts and circumstances of the case.

As stated supra, the subject-matter in the present OP is the one, under Section 30 of the Act, and there are rival claims with regard to the entitlement for compensation. Therefore, taking into consideration the nature of controversy and submissions made by the learned counsel for the petitioners, this Court is of the considered opinion that the petitioners are entitled to the relief sought in I.A.No.1064 of 2013. This Court is also of the opinion that the said permission, in the facts

and circumstances of the case, cannot be permitted unconditionally. However, this Court is inclined to consider the request of the petitioners herein subject to payment of costs of Rs.7,500/- (Rupees seven thousand five hundred only), payable to the learned counsel for the respondents herein, within two weeks from today.

For the foregoing reasons, the C.R.P is allowed, setting aside the order dated 29-10-2013 passed in I.A.No.1064 of 2013 in O.P.No.59 of 2006. Consequently, I.A.No.1064 of 2013 stands allowed. It is, however, made clear that the Court below shall fix a date for cross-examination of PW-1, within four weeks from the date of this order. It is further made clear that, if the parties do not proceed with the matter for cross-examining the witness on the date to be fixed by the Court below, the right to cross-examine PW-1 shall stand forfeited. It is also made clear that the Court below shall dispose of the main OP by the end of April, 2015.

There shall be no order as to costs.

A.V. SESA SAI, J.

Dt.12-02-2015.

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[\[1\]](#) 2011 (3) ALD 174