

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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CIVIL REVIION PETITION No. 2143 of 2015

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ORDER:

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Assailing the order dated 21.01.2015 passed in I.A. No.1151 of 2013 in O.S. No.230 of 2005 on the file of the Principal Junior Civil Judge at Huzurabad, the petitioners/defendants 3 & 4 filed the present Revision under Article 227 of the Constitution of India.

The facts, which lead to filing of the present Revision, are as under:-

The plaintiffs, who are respondents 1 to 3 herein filed O.S. No.230 of 2005 seeking declaration of title entitling them to receive compensation amount awarded by Land Acquisition Officer in respect of acquisition of land measuring 0-13 gts., in Survey No.454 situated at Illanthakunta village, Huzurabad Mandal. It is stated that the trial in the said suit was over and when the suit was posted for arguments, an application under Order XVI Rule 2 read with Section 151 of C.P.C., came to be filed by the plaintiffs for summoning J.S.Shiva Kumar, Chairman, Expert Board Truth Labs, Hyderabad for marking certain documents through him. By an order dated 21.01.2015 the said application was allowed. Challenging the same, the present Civil Revision Petition came to be filed.

The contents of the affidavit filed in support of the I.A., shows that on 04.02.2013 the plaintiff filed certain documents, but out of the list, Document Nos. 11 to 16 were not marked as they relate to an Expert Opinion sent at the request of the plaintiffs. Hence, it was stated that the said documents are important to prove the case and prays for marking of the same. It is further said that sending of the documents to Expert and seeking opinion of the Expert are within the knowledge of the defendants and since the same is not challenged at that time, it

is just and necessary for marking the documents through them person who examined them.

A counter came to be filed opposing the same. It is stated that on 12.12.2012 Exs.A-1 to A-8 were marked and on the said date the Court refused to mark documents No.11 to 16 of the list. Thereafter, on an application made by the petitioner Exs.A-9 to A-21 were marked on 02.04.2013. It is further stated that again on an application of the petitioner Ex.A-22 was marked on 12.06.2013. It is stated that the petitioner who himself is an Advocate and having knowledge about the rejection of the documents 11 to 16 of the list by the Court on 12.12.2012 deliberately not raised any objection and has filed any petition for marking the above documents though he filed number of petitions to mark other documents. In view of the above, it is stated that filing of the petition is nothing but abuse of the proceedings.

The learned Principal Junior Civil Judge, Huzurabad found that the marking of these documents through an Expert is very much necessary for a just decision of the case and as such the I.A. was allowed though it was filed at belated stage. It was further observed by the trial court that no prejudice would be caused if these documents are brought on record.

The learned counsel for the petitioners mainly submits that the version set out in the affidavit filed in I.A., that these documents which are sought to be marked now, were sent to the Expert by the defendants is incorrect. Taking advantage of the same the learned counsel for the petitioners submits that the entire proceedings would fall to ground. He further submits that having regard to the request made in the suit, marking of the documents are not at all necessary. He further submits that the plaintiffs filed O.P. No.19 of 2002 under Section 18 of the Land Acquisition Act and without inviting any order in the said suit approached the Court by way of filing this I.A., is illegal and improper. He further submits that without questioning the Award passed by the Land Acquisition Officer in Award Prl.No.997/93 dated 17.12.1994, the present suit itself is not maintainable.

On the other hand, the learned counsel for the respondents/plaintiffs would submit that a mistake crept in while drafting the affidavit filed in support of I.A., wherein it was mentioned as if the defendant has sent the document to Expert. But that itself cannot lead to dismissal of I.A. He submits that if the entire contents of the affidavit are read as a whole, it would clearly show that it was the plaintiffs who made an application for sending the documents to the Expert. He further submits that the question as to whether the present suit is maintainable or not can only be decided by the said Court at the time of trial and it is always open to the defendants herein to raise the objection during the course of trial. In any event he submits that nothing survives in the Civil Revision Petition as the documents which are sought to be brought on record are already marked through the Expert.

A perusal of the material placed before this Court would show that the present application came to be filed questioning the order of the Principal Junior Civil Judge, Huzurabad, wherein an application filed to summon the Chairman, Expert Board Truth Labs, Hyderabad to mark certain documents was allowed. The main ground urged by the learned counsel for the petitioners is that the entire trial is over and when the case is posted for arguments, the trial Court ought not to have allowed the said application. The learned counsel for the petitioners submitted that marking of these documents was already rejected on 12.12.2012 and as such marking of documents again cannot be accepted. It is to be noted that no order is placed on record showing rejection of marking the documents on 12.12.2012. In fact the said aspect is strongly denied by the learned counsel for the respondents stating that on earlier occasion all the documents were sought to be marked but document Nos.11 to 16 were kept aside for marking the same through an Expert. The argument of the learned counsel for the petitioners that the present application has been filed at belated stage cannot also be accepted for the reason that the present I.A. was filed on 27.12.2013 itself but due to various reasons the said I.A. could not be disposed of till January 2015. Therefore, it

cannot be said that there was abnormal delay on the part of the plaintiffs in filing the said application.

Further, it is to be noted that though the order in I.A. was passed on 21.01.2015, the petitioners herein filed the present C.R.P. in the month of June 2015. Apart from that, the learned counsel for the respondents submits that after filing of the Civil Revision Petition before this Court, the Expert who is sought to be summoned in this I.A. appeared before the Court on 13.08.2015 and documents No.11 to 16 are already marked through him. The learned counsel for the defendants took time to cross-examine the Expert and as such the matter was adjourned to 08.09.2015. It is said that on 08.09.2015 the request of the learned counsel for the petitioners seeking time for cross-examining the Expert was disallowed, as there was no stay in this C.R.P. It is to be noted that the documents which are sought to be marked are nothing but the opinion expressed by the Expert when they were sent to him for examination. Further, no objection was raised when these documents were sent to the handwriting expert and even after the receipt of the report. The defendants did not raise any objection nor filed any application questioning the expert report. Thus, bringing these documents on record would not in anyway cause any prejudice to the defendants. Therefore, the finding of the trial court that these documents are necessary for a just decision of the case, cannot be found fault with. Hence, I find no merits to allow the C.R.P. and the same is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 16.09.2015

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