

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1537 of 2015

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ORDER:

This Civil Revision Petition is filed challenging the order in E.A. No.31/2014 in L.A.O.P. No.161/1987 dated 23.03.2015 passed by the learned Principal Senior Civil Judge, Kakinada.

The land of the petitioners appears to have been acquired and an amount of Rs.3,36,544.25 ps was awarded under the award. When there was a dispute with regard to the rights of parties, a reference was made under Section 31(2) of the Land Acquisition Act by depositing the amount in the Court. The Court ultimately passed an order on 15.10.1989 and determined the rights. However, it appears that A.S.No.2700/1989 and A.S.No.138/1989 were preferred against the common judgment and decree in O.S.No.143/1982 and O.S.No.168/1985, but those appeals were dismissed for default by this Court on 31.03.2006 and 20.08.2001 respectively. The seventeenth claimant filed a cheque petition for payment of an amount of Rs.14,67,766/- on behalf of Claimant Nos.8, 16 and 18 to 20 and when the said application was dismissed, the present Civil Revision Petition was filed.

The learned Principal Senior Civil Judge, Kakinada, dismissed the application on the ground that no affidavit was filed by the petitioners therein stating that the orders of dismissal passed by this Court on 31.03.2006 and 20.08.2001 in A.S.No.2700/1989 and A.S. No.138/1989 respectively have become final. The other ground on which the application was dismissed was that the eighth claimant, on whose behalf also the cheque petition was filed, is claiming half of the amount as per the Will dated 11.11.1982 and the other claimants are entitled for the remaining half consequent on the death of seventh claimant, and since only one cheque petition was filed, the cheque petition cannot be considered. The lower Court dismissed the application with the following observations:

“Apart from the 17th claimant filed this petition to give entire cheque amount of Rs.14,67,766/- on his behalf and on behalf of claimant Nos.8, 16 and 18 to 20. The 7th and 8th claimants claiming their right as legatees as per Will dt. 11-11-1982. Since Somalamma (7th claimant) died, the claimants 16 to 20 were added as legal representatives as per orders in I.A. No.1057/89 and they are one set of claimants on behalf of claimant No.7. The 8th claimant claiming half of the amount as per Will, as such all the claimants should filed independent cheque petitions to claim their respective amounts. Instead of filing independent cheque petitions, the 17th claimant filed this petition on his behalf of on behalf of claimant Nos.8, 16 and 18 to 20 which is not legally valid. Mere filing of undertaking affidavits in this petition by other claimants is of no use. If independent cheque petitions will be filed, certainly this court will considered as per law and further recently, the Government of India introduced Pradhana Mantri Jan Dhan Yojana. The said scheme has been started with a target to provide ‘universal access to banking facilities’ starting with “Basic Banking accounts” with overdraft facility. When such is the scheme introduced by the Government of India, all the claimants to file their respective cheque petitions with their opening accounts subject to file affidavits that those appeals were not restored and became final and this court will address a letter to Registry of Hon’ble High Court of A.P. after obtaining clarification about the pendency of those appeals or not, their cheque petitions will be considered if they file independent cheque petitions since all the claimants are illiterates, as such independent cheque petitions are necessary to get compensation amount for their respective shares.

With the above observations, the petitioner/17th claimant is not entitled to receive entire compensation amount on his behalf and on behalf of claimant Nos.8, 16 and 18 to 20. Accordingly, the point is answered.”

Learned counsel for the petitioners submitted that the petitioners are poor people and no amounts were released for the land acquired way back in the year 1987. He further submitted that as the respondents have already received their amounts no notice is necessary in the present Civil Revision Petition.

It is clear from the impugned order that the counsel for the petitioners filed certified copies of the orders in both the appeals and the lower Court should not have insisted for filing of affidavit. If there was a need, instead of dismissing the application on the ground of not filing an affidavit, as the orders in the appeals have become final it should have directed the counsel to file an affidavit. It is not known why a single cheque petition cannot be filed on behalf of the eighth claimant and others when there was no objection from the eighth claimant. The lower Court should have seen whether the application filed by seventeenth claimant on behalf of Claimant Nos.8, 16 and 18 to 20 was genuine or not, and after taking necessary precautions, it should have ordered the cheque petitions in accordance with law.

In view of the above, the impugned order dated 23.03.2015 is set aside and E.A.No.31/2014 is remanded to the learned Principal Senior Civil Judge, Kakinada, to consider the cheque petition filed by the seventeenth claimant in accordance with law and above observations and pass appropriate orders within thirty (30) days from the date of receipt of a copy of this order. Before passing the order, the lower Court shall verify whether the respondents/claimants have already received the amounts in respect of their share earlier and take that fact also into consideration.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

23.11.2015

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