

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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CIVIL REVISION PETITION No.4761 of 2015

BETWEEN

K.C. Sathyanarayana Moorthy.

... PETITIONER

AND

The State of A.P., Rep. by the District Collector, Chittoor and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 29.01.2016

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

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ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Arbitration representing the respondents.

2. Petitioner herein is the plaintiff in O.S.No.25 of 2006 for permanent injunction and during the pendency of the suit, it is alleged that the respondents have demolished part of the portion of the house of the petitioner. Thereafter, the petitioner had sought amendment of plaint and also sought appointment of Advocate Commissioner for noting the physical features of the property. That application, I.A.No.130 of 2006, was ordered and subsequently, the Commissioner has filed a report also on 27.02.2006. Meanwhile, the petitioner had filed WP.No.11116 of 2006 questioning the action of the respondents and proceedings of the second respondent therein in demolishing the petitioner's house as illegal and contrary to law. While disposing of the said writ petition by order dated 03.03.2014, this Court, *inter alia*, held that the demolition is clearly unreasonable, highhanded and preposterous but on finding that this Court under Article 226 of the Constitution of India cannot undertake enquiry as to assess the loss, if any, sustained by the petitioner, gave liberty to the petitioner to approach a competent civil Court for establishing the extent of damage to the property.

3. It appears that thereafter the petitioner filed the present application, I.A.No.672 of 2015, to appoint an Advocate Commissioner for noting down the value of the demolished portion or to appoint a Civil Engineer to calculate the damages. The Court below dismissed the said petition under the impugned order dated 23.09.2015, primarily, on the ground that after nine years and after the report of the earlier Commissioner having been filed, there is no justification for the petitioner's present request.

4. It is evident from the narration above that the order of this Court in the writ petition was only on 03.03.2014 and prior to that, the Commissioner's report was only for the purpose of noting the physical

features. Hence, the earlier Commissioner's report do not deal with the value of the structures and the present application filed by the petitioner is in conformity with the directions of this Court in the writ petition, referred to above. However, I do not see any justification for appointing an Advocate Commissioner, as he cannot assess the value and as such, the alternative request of the petitioner to appoint Civil Engineer, as suggested by the parties, to inspect and assess the value would be appropriate and just. Hence, the impugned order is set aside and I.A.No.672 of 2015 is allowed to the extent of directing the Court below to appoint a Civil Engineer to visit the premises and assess the value of the demolished structures. It is made clear that it is open for both the parties to file panel of names to the Court below and also to file objections to the report, if any, filed by the Civil Engineer and thereafter, the Court below shall deal with the matter in accordance with law and take an appropriate decision.

The civil revision petition is allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

January 29, 2016
DSK