

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.118 of 2016

ORDER:

Heard Sri Kambampati Ramesh Babu, Learned Counsel for the petitioners and Sri Ch. Shanmukha Rao, Learned Counsel for the respondent and, with their consent, the Civil Revision Petition is disposed of at the stage of admission.

This Revision is preferred against the order passed by the Principal Senior Civil Judge, Gajuwaka in E.P. No.326 of 2014 dated 07.09.2015. E.P. No.326 of 2014 was filed by the respondent herein, under Order 21 Rule 54 C.P.C, to sell the suit schedule property, by way of proclamation of sale, in a public auction to recover the E.P. amount in full and final satisfaction of the E.P.

In the order under revision, the Court below noted the submission, urged on behalf of the decree-holder, that the E.P. schedule property was not land assigned under a D-form patta, but was an alternative site allotted under rehabilitation package, and was therefore alienable. Without recording its finding on such a contention the Court below directed filing of a Sale Proclamation, encumbrance certificate, a valuation certificate, and a no due certificate. In the counter filed in the I.A, the petitioner herein had contended that the said property could not be attached and sold in execution, as it was assigned under the Land Acquisition Act; they were filing the assignment order issued by the Government for the perusal of the Court; and the assignment order revealed that the land was assigned lands.

Sri Kambampati Ramesh Babu, Learned Counsel for the petitioner would refer to clause (8) of the order of assignment in support of his submission that the said assigned land cannot be alienated. On the other hand Sri Ch. Shanmukha Rao, Learned Counsel for the respondent, would submit that the petitioner is not a landless poor person; he is an employee of Visakhapatnam Steel Plant; the assignment granted in his favour is as a measure of rehabilitation and resettlement and is alienable.

Before directing sale proclamation, the Court below ought to have considered whether the suit schedule land, which is admittedly an assigned

land, is alienable or not; and, without recording any such finding, the Court below could not have proceeded to issue a Sale Proclamation. I consider it appropriate, in such circumstances, to set aside the order under revision, to restore E.P. No.326 of 2014 to file, and direct the Court below to pass an order afresh in accordance with law after giving both parties an opportunity of being heard. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

01.04.2016.

MRKR