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

CIVIL REVISION PETITION Nos.5307 and 5325 of 2015

COMMON ORDER:

Since the challenge in these two revisions is to the same order this Court deems it apposite to dispose of the present revisions by way of this common order.

Grampanchayat, Eluchuru, Santhamaguluru Mandal, Prakasam District is the petitioner in both these revisions. These revisions are directed against the order, dated 06-10-2015 passed by the Court of Senior Civil Judge, Addanki, Prakasam District in E.P.No.60 of 2015 in O.S.No.23 of 2001.

The facts and circumstances, in nutshell, leading to filing of the present C.R.Ps. are as infra:

First respondent instituted O.S.No.23 of 2011 against the petitioner-Gram Panchayat on the file of the Court of the Senior Civil Judge, Addanki, Prakasam District and the learned Judge decreed the said suit on 18-03-2011. Seeking enforcement of the said decree, the plaintiff/respondent No.1 herein filed E.P.No.60 of 2015 by way of attachment of amount kept in the Treasury Office, Martur belonging to the judgment debtor-Gram Panchayat. The petitioner-Gram Panchayat resisted the said E.P. by way of filing counter. Earlier the learned Judge, by way of an order, dated 30-07-2015, dismissed the Execution Petition. As against the said order, the decree holder preferred C.R.P.No.3026 of 2015 and this Court allowed the said revision on 21-08-2015 and remanded the matter for re-consideration. After said remand, now by virtue of an order, dated 06-10-2015 the learned Senior Civil Judge held that the decree holder is entitled for attachment of Gram Panchayat fund.

Calling in question the validity and legal sustainability of the said order, these revisions have been filed.

Heard Sri B.V. Subbaiah, learned senior counsel representing Sri M. Bramha Reddy, learned counsel for the petitioner-Gram Panchayat on record in C.R.P.No.5307 of 2015 and Sri G. Sheshadri, learned Standing Counsel for petitioner in C.R.P.No.5325 of 2015 and
Sri N. Satyanarayana, learned counsel for the decree holder apart from perusing the material available before this Court.

Submissions/contentions of the learned senior counsel Sri B.V. Subbaiah are:

The order under challenge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 60 and Order 21 of the C.P.C. The questioned order is contrary to the Government Grants Act, 1895 and A.P. Panchayat Raj Act, 1994 and the Rules framed thereunder. Gram Panchayat is only a trustee and custodian of the funds allotted for a specific purpose and the Gram Panchayat has no power of disposal of the said funds, as such, the Court below grossly erred in allowing the execution petition.

Learned Standing Counsel Sri G. Sheshadri has adopted the arguments of the learned senior counsel.

Submissions/contentions of the learned counsel for the respondents are:

1. *The questioned order is neither illegal nor does the same suffer*

from any infirmity, as such, the same is not amenable for interference of this Court under Section 115 of the Code of Civil Procedure.

2. *The impugned order is strictly in accordance with the provisions of A.P. Panchayat Raj Act, 1994 and not opposed to the said Act nor the Rules framed there under.*
3. *The provisions of A.P. Panchayat Raj Act imposes obligation on the Gram Panchayat to pay the amounts under the decree.*
4. *By any stretch of imagination, it cannot be contended that the grant given by the Government to the Gram Panchayat cannot be attached.*
5. *The present revisions are not maintainable and the petitioner Gram Panchayat is required to file appeal.*

In the above backdrop, the issues that boil down for consideration and adjudication are:

1. *Whether the questioned order is in accordance with law?*
2. *Whether the petitioner is entitled for any indulgence of this Court under Section 115 of Code of Civil Procedure?*

The case on hand is a typical example of the well-known saying that the difficulties of an Indian decree start from the date of decree as observed by the Hon'ble Privy Council.

The efforts and endeavour of the Court should necessarily be in the direction of enforcement of decrees, which have attained finality, otherwise there is every threat of the people loosing faith and confidence in the system guided by rule of law. It is equally the duty of the Courts to prevent the efforts and attempts of the wise litigants from proceeding in the direction of frustrating the validly passed decrees in the name of technicalities and iniquitous explanations.

The information available before this Court vividly and amply discloses that the decree, dated 18-03-2011 rendered by the Court of the Senior Civil Judge attained finality. Praying for enforcement of the said decree the decree holder/ 1st respondent filed the present Execution Petition No.60 of 2015. Before the Court below, resisting the said E.P., the petitioner/Gram Panchayat filed counter, stating *inter alia* that the very decree is in-executable and not maintainable and elaborating the same, now it is the contention of the learned senior counsel and the learned Standing Counsel also that the impugned order is untenable and un-sustainable under the provisions of A.P. Panchayat Raj Act, 1994 and the Rules framed thereunder and the Government Grants Act, 1985 and Section 60 of C.P.C.

On the contrary, it is submitted by the learned counsel for the decree holder that the said contention of the learned senior counsel cannot be sustained and it is completely bereft of any legal position.

In view of the said rival contentions, it would be highly necessary and essential to refer to the relevant provisions of law. Sections 74 and 75 of the A.P. Panchayat Raj Act, 1994 read as under:

"74:Gram Panchayat Fund

(1) All moneys received by the Gram Panchayat shall constitute a fund called the "Gram Panchayat Fund" and shall be applied and disposed of in accordance with the provisions of this Act and other laws:
Provided that the Gram Panchayat shall credit, subject to such rules as may be prescribed, the proceeds of any tax or fee levied under this Act, to a special fund earmarked for the purpose of financing any specific public improvementA separate account shall be kept of the receipts into and the expenditure from such special fund.
(2) Subject to the provisions of sub section (1), the

receipts which shall be credited to the Gram Panchayat fund shall include -

(i) the house tax and any other tax or any cess or fee, levied under this Act;

(ii) the proceeds of the duty collected under sub section (4) of Section 60;

(iii) the proceeds of the duty on transfers of property levied under Section 69 which are paid to the Gram Panchayat;

(iv) any payment made to the Gram Panchayat by a market committee in pursuance of sub section (3) of Section 11 of the Andhra Pradesh (Andhra Area) Commercial Crops Markets Act, 1933 (Act XX of 1933), or any other law similar thereto for the time being in force;

(v) the taxes and tolls levied in the village under Sections 117 and 118 of the Andhra Pradesh (Andhra Area) Public Health Act, 1939; or under the corresponding provision of any other law similar thereto for the time being in force in the State

(vi) any payment made to the Gram Panchayat by the Government under Section 13 of the Andhra Pradesh Entertainments Tax Act, 1939;

(vii) the amount contributed by the Mandal Parishad to the Gram Panchayat in respect of markets in the village classified as Mandal Parishad markets or paid by the Mandal Parishad to the Gram Panchayat towards the latter s share of the income derived from such markets as per the apportionment made under Section 112 and the amount paid by a Zilla Parishad or any of the joint committees referred to in Section 57 to the Gram Panchayat towards the latter s share of the income derived from a ferry under the management of the Zilla Parishad or joint Committee, as the case may be, as per the apportionment made under the said section;

(viii) fees for the temporary occupation of village sites, roads and other similar public places or parts thereof in the village;

(ix) fees levied by the Gram Panchayat in pursuance of any provision in this Act, or any rule or order made thereunder;

(x) income from endowments and trusts under the management of the Gram Panchayat;

(xi) the net assessment on service inams which are resumed by Government after the Commencement of this Act;

(xii) income derived from village fisheries, vested in the Gram Panchayat including the woods and reeds;

(xiii) income derived from ferries under the management of the Gram Panchayat;

(xiv) unclaimed deposits and other forfeitures;

(xv) the seigniorage fees collected by the Government every year from persons permitted to quarry in the village for materials including minor minerals other than major minerals;

(xvi) all income derived from porambokes which vest in

the Gram Panchayat or the user of which is regulated by the Gram Panchayat and also the penalty and penal assessment if any, levied in respect of unauthorised occupation thereof under any law for the time being in force;

(xvii) all income derived from trees standing on porambokes although the user of the porambokes is not vested in the Gram Panchayat;

(xviii) income from leases of Government property obtained by the Gram Panchayat;

(xix) a sum equivalent to one tenths of the gross income derived by the Government every year from fines imposed by Magistrates in respect of offences committed in the village under this Act, or any rule or bye law made thereunder or any other provision of law which is prescribed in this behalf;

(xx) grants received from the Government, the Zilla Parishad or Mandal Parishad;

(xxi) income from investments of amounts taken from the Gram Panchayat fund;

(xxii) all other receipts accruing from the sources of Gram Panchayat revenue specified in this Act; and

(xxiii) all sums other than those enumerated above which arise out of, or are received in aid of, or for expenditure on any institutions or services maintained or financed from the Gram Panchayat fund or managed by the Gram Panchayat.

(3) All moneys received by the Gram Panchayat shall be lodged in the nearest Government treasury

Provided that the amounts received as funds under the Jawahar Rozgar Yojana Employment Assurences Scheme or other Wage Employment Schemes shall be lodged in nearby Nationalised banks or Co-operative Banks or PostOffices in such manner as may be prescribed.

(4) All orders or cheques against the Gram Panchayat Fund shall be signed by such authority as may be prescribed.

75:Expenditure from Gram Panchayat Fund

(1) The purposes to which the Gram Panchayat fund may be applied include all objects expressly declared obligatory or discretionary by this Act or any rules made thereunder or by any other laws or rules and the fund shall be applicable thereto within the village subject to such rules or special orders as the Government may prescribe or issue and shall, subject as aforesaid, be applicable to such purposes outside the village if the expenditure is authorised by this Act or specially sanctioned by the Commissioner.

(2) (a) It shall be the duty of every Gram Panchayat to provide for the payment of --

(i) any amounts falling due on any loans contracted by it;

(ii) the salaries and allowances and the pensions,

pensionary contributions and provident fund contributions of its officers and servants;
(iii) sums due under any decree or order of a court;
(iv) contributions, if any, levied by the Mandal Parishad subject to such limits as may be specified by Commissioner; and
(v) any other expenses rendered obligatory by or under this Act or any other law.
(3) A Gram Panchayat may, with the sanction of the Government, contribute to any fund for the defence of India.
(4) A Gram Panchayat may, with the sanction of the Commissioner, also --
(i) contribute towards the expenses of any public exhibition, ceremony or entertainment in the village;
(ii) contribute to any charitable fund, or to the funds of any institution for the relief of the poor or the treatment of disease or infirmity or the reception of diseased or infirm persons or the investigation of the causes of disease;
(iii) contribute to the funds of any institution established for promoting community development or the aims of Panchayat Raj; and
(iv) defray any other extraordinary charges.

It is very much evident from a reading of the above provisions of law that as per Section 74 of the A.P. Panchayat Raj Act, 1994 the Gram Panchayat Fund includes all moneys received by the Gram Panchayat including the grants received from the Government, Zilla Parishad and Mandal Parishad under Section 74(xx) of the Act. It is significant to note that Section 75 (2)(iii) of the Act imposes statutory obligation on the Gram Panchayat to pay the sums due under any decree or order of a Court.

A conjoint reading of Sections 74 and 75 of the A.P. Panchayat Raj Act, in clear and un-equivocal terms, renders the contentions of learned senior counsel for petitioners un-sustainable and un-tenable. According to the learned senior counsel, in view of the prohibition and diversion of funds contained in A.P. Gram Panchayats (Earmarking of Funds) Rules, 2000 notified vide G.O.Ms.No.156 of Panchayat Raj and Rural

Development (Rules), dated 03-05-2000, the learned Senior Civil Judge, grossly erred in passing the impugned order. But a reading of Rule 2 of the said Rules makes it clear that the prohibition on diversion contained therein is against Gram Panchayat only and the same, by any stretch of imagination, cannot be construed as a prohibition of attachment and execution under a decree.

In fact, the learned Senior Civil Judge, on thorough consideration of the entire material available, recorded a well reasoned finding on the said aspect. Therefore, the contention contra advanced by learned senior counsel cannot be countenanced and is accordingly rejected.

Yet another contention advanced by learned senior counsel on the maintainability of the Execution Petition in the light of the provisions of Government Grants Act, 1895, in the considered opinion of this Court, is also untenable in view of overriding effect of the above mentioned provisions of A.P. Panchayat Raj Act, 1994 which received the assent of the Hon'ble President of India as per the provisions of
Article 254 (2) of the Constitution of India.

The above provisions of A.P. Panchayat Raj Act also dispel and render the contention of the learned senior counsel that since the Gram Panchayat has no power of disposal under Section 60 of C.P.C., the E.P. is not maintainable untenable. Therefore, in the above background this Court has no scintilla of hesitation nor any traces of doubt to hold that the petitioner has failed in making out any case, warranting any interference under Section 115 of the Code of Civil Procedure and this Court finds no merit in the revision to meddle with the order impugned in the Civil Revision

Petitions.

Accordingly, these Civil Revision Petitions are dismissed. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed.

A.V. SESHA SAI, J

February 05, 2016

Note: L.R. copy to be marked.
B/o.PN

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

CIVIL REVISION PETITION Nos.5307 and 5325 of 2015

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HON'BLE SRI JUSTICE A.V. SESHA SAI

CIVIL REVISION PETITION Nos.5307 and 5325 of 2015

%30-03-2015

 # CIVIL REVISION PETITION Nos.5307 and 5325 of 2015:

Between:

Elchuru Gram Panchayat, Elchuru

... PETITIONER/RESPONDENT/J.Dr.

a n d

$Standard Enterprises, Rep. by its Proprietor, Addanki village and Mandal, Prakasam District

… **RESPONDENT/PETITIONER/D.Hr.**

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> HEAD NOTE:

!**Counsel for Petitioner:** Sri B.V. Subbaiah, learned senior counsel representing Sri M. Bramha Reddy, learned counsel for the petitioner in C.R.P.No.5307 of 2015 and Sri G. Sheshadri, learned Sanding Counsel in C.R.P.No.5325 of 2015

^**Counsel for Respondent:** Sri N. Satyanarayana

? Cases referred -