HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.2122 & 2132 of 2016

COMMON ORDER:

These two Civil Revision Petitions are filed against separate Orders passed in E.A.Nos.18 and 19 of 2016 in E.P.No.53 of 2007 in OP No.94 of 1991 on the file of I Senior Civil Judge, City Civil Court, Hyderabad, ordering issuance of cheques in favour of claimants/respondents herein.

2. The claimants in both the petitions filed Petitions under Rules 230 and 231 of the A.P. Civil Rules of Practice, 1980, for issue of cheques for Rs.28,57,844/- each in their favour. The trial Court passed impugned Orders, cited above, directing issue of cheques in their favour on proper identification and acknowledgment.

3. The J.Dr No.2 in E.A.No.18 and 19 of 2016 filed the present revision petitions raising a objection that the Government acquired the house property bearing municipal No.5-9-25 admeasuring 13,486 sq. mtrs along with the building on the requisition of Telephone Department (BSNL) in the year 1986, vide Notification dated 25.08.1986, and as the Reference Officer awarded meager compensation, by an Award dt. 30.05.1989, applications for reference were submitted, which were referred to the Civil Court under

Section 18 of the Land Acquisition Act and was registered as O.P.No.94 of 1991 and the Civil Court enhanced the amount to Rs.1,000/- per sq.yard. Dissatisfied with the same, they preferred appeals Nos. CCCA No.138 of 1999 and CCCA No.170 of 2001 before this Court and both appeals were heard joint and this Court was pleased to allow the appeals, preferred by the claimants, by awarding Rs.1,800/- per square yard from Rs.1,000/- while dismissing the appeals filed by the Government, by a Common Judgment and separate Decrees dt. 19.06.2016. Later, the matter was carried to the Apex Court by the Government, which was dismissed by the Apex Court at the stage of admission itself. Later, the claimants filed E.Ps and in pursuance of the directions of this Court, the Government deposited the Decretal amount to the credit of OP and the claimants had drawn amount by way of Cheques from time to time and every time, the respondent therein/revision petitioner raised objections and despite it, the executing Court issued cheques in their favour.

4. Respondent No.2/BSNL filed Counter admitting acquisition of property and filing of E.A. and withdrawal of the amounts etc. including the deposit of Rs.4,97,361/- and Rs.17,49,465/- to the credit of O.Ps.

5. It is the specific contention of the respondent that an amount of Rs.2,59,17,006/- has been due vide Order Dt. 08.09.2015 in E.A.No.71 of 2015 in E.P.No.53 of 2007 in O.P.No.94 of 1991 and it was duly released in equal shares through cheque petitions by the Court and by the Executing Court and there is no scope for any further payment of interest and release of amount lying with the Court and the D.Hrs have been paid additional market value, solatium and interest for the protected land of an extent of 3660 sq.yards as compensation while market price payable under Section 23(1) of Land Acquisition Act (for short 'LA Act') r/w Section 26 of Urban Land Ceiling Act, 1976 (for short ' the 1976 Act') with reference to the Notification dt, 25.08.1986 under Section 4 (1) of L.A.Act and in this connection, it is submitted that DHr/Petitioners are confusing this Court about their entitlement and obtained orders from the Court, which is contrary to the Judgment reported in *State of Goa v. Gopal Baburao Gaude and Others*[1].

6. The Executing Court i.e., I Senior Civil Judge, City Civil Court, Hyderabad, passed the impugned Orders dt.22.03.2016 ordering issue of cheques in favour of claimants.

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[1] 2009(10) SCC 686

7. Aggrieved by the Orders passed by I Senior Civil Judge, City Civil Court, Hyderabad, the present Revision Petitions are filed raising several contentions with regard to entitlement of the claimants to recover solatium, interest and additional market value etc., when the land was acquired under Urban Land Ceiling, by following the procedure under Land Acquisition Act, and thereby the orders of the Executing Court are not in consonance of the law declared by the Apex Court in *Bai Dosabai v. Mathurdas Govinddas and others*[2].

8. During hearing, Sri R.S.Murthy, learned counsel for revision petitioner contended that the Awards passed by the trial Court, which were confirmed by the Appellate Court, are not in consonance with the judgment of Bai Dosabai's case (2 supra) and this Court in cheque petitions filed under Rules 230 and 231 of CPC can modify the Order and pass appropriate orders setting aside the Order passed by the I Senior Civil Judge, City Civil Court, Hyderabad.

9. Per contra, Sri B. Vijaysen Reddy, learned counsel for R.3 herein would contend that at every stage the revision petitioner raised the same objections and those observations were overruled by this Court in earlier judgments and when the Court passed an Award granting

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[2] AIR 1980 SC 1334

Solatium, interest and additional compensation etc., the Executing Court cannot go beyond the decree, i.e., Award to deny any benefits, which he is entitled to, as per the Award and apart from that in a petition filed under Rules 230 and 231 of the Civil Rules of Practice, these questions cannot be decided since the jurisdiction of this Court under Article 227 of the Constitution of India is limited, which is supervisory in nature, and even if the Order of the Sub Ordinate Courts or Tribunals are not in accordance with law, this Court cannot interfere with such orders except where it is found that the Subordinate Courts or Tribunals transgressed their limits of jurisdiction and prayed to dismiss the revision petitions.

10. Upon considering the rival contentions and perusing the material available on record, the point that arise for determination is:

> *Whether the Executing Court while deciding applications filed under Rules 230 and 231 of CPC can go beyond the decrees and decide the validity of the decrees passed by the Civil Court awarding compensation, which was confirmed by the Appellate Court and if so, whether the Orders passed by the Executing Court are liable to be set aside?*

11. <u>POINT</u>: Undisputedly, the claimants were found in possession of excess land and they had to surrender part of the land they possessed and they are called as " Surplus Land Holders' under Urban Land Ceiling Act,1976. Retainable portion and other part is an excess land to be surrendered. But the land retainable by the petitioners/claimants was acquired by the Government on the requisition of BSNL. 3663.91 sq.yards is the protected land and 10,541.60 sq yards, is the surplus land to be surrendered by the claimants to the Government under the provisions of the 1976 Act. Similar questions have been raised before this Court in the earlier litigation between the same parties in CRP No.4916 of 2012 against the Order dt. 10.09.2012 passed in E.P.No.53 of 2007 in O.P.No.94 of 1991 and all these questions were raised before this Court and this Court declined to interfere with the Orders passed by the trial Court. This Court also made clear observations while deciding the contention raised by the learned counsel for revision petitioner with reference to Section 26 of Urban Land Ceiling Act, 1976, and held as follows:

> "The petitioner is under a misconception that even where the land is acquired by invoking the provisions of the LA Act, Section 26 of the ULC Act comes into play. One has to keep in mind, the distinction between the voluntary transfers on the one hand and involuntary transfers on the other hand. The transfer that takes place as a result of initiation of proceedings under the LA Act, is, beyond any pale of doubt, an involuntary one. The acquisition is done irrespective of the intention of the owner, and many a time, in spite of the opposition to it. Therefore, occasion to invoke Section 26 of the ULC Act, in the event of any transfer taking place as a result of acquisition by invoking the provisions of the LA Act, does not exist and by making the above observation, at the end in the operation portion of the Order considered the objection and held that

> in clear and categorical terms, the trial Court as well this Court granted this Court granted the relief of solatium, additional market value and interest under the relevant provisions of the LA Act. The acceptance of the contention of the petitioner by the executing Court would have the effect of reviewing, if not setting aside the order passed by this Court as confirmed by the Hon'ble Supreme Court in the S.L.P filed by the petitioner itself. Such a course is totally impermissible. In addition to that, the learned Presiding Officer of the executing Court has referred to several judgments in support of his conclusion that all the statutory benefits under the LA Act are extendable to non-surplus lands, acquired by the Government".

Thus, this Court in earlier round of litigation turned down the contention raised by the revision petitioner herein in CRP No.4916 of 2012 by Order dt. 18.07.2014.

12. Against the Order in CRP No.4916 of 2012 dt. 18.07.2014, a Special Leave Petition was filed before the Apex Court and the same was dismissed at the stage of admission. The grounds mentioned in the SLP are with reference to Section 11(6) of Urban Land (Ceiling and Regulation) Act, 1976 and regarding entitlement to claim additional market value, solatium and interest etc., by the claimants. The learned counsel for the revision petitioner would contend that dismissal of Special Leave Petition by the Apex Court at the stage of admission is not a declaration of law and not a binding precedent. No doubt, there is force in the contention raised by the learned counsel for petitioner. But, this Court is bound by the Order in CRP No.4916 of 2012. This Court in a petition filed against the Order passed in a petition filed under Rules 230 and 231 of Civil Rules cannot alter the order passed in CRP

No. 4916 of 2012 by exercising power under Article 227 of the Constitution of India.

13. The main grievance of the revision petitioner is that the claimants are not entitled to claim additional compensation, solatium and interest etc., when the excess land was acquired by the Government, by Notification under Section 4 (1) of the L.A.Act and under the provision of the 1976 Act. All these questions were raised before the Apex Court in Special Leave Petition. But, the revision petitioner is not a party to the CCCAs, but came on record, for the first time, in SLP before the Apex Court. But, his contention was turned down dismissing the SLP at the stage of admission by the Apex Court. No doubt, the jurisdiction of the Executing Court is limited and when the Civil Court passed an Award granting compensation under various heads including additional market value, interest and solatium, the limited jurisdiction of the Executing Court is to execute the decree and cannot go beyond the decree and modify the Order passed by the Civil Court.

14. Curiously, all these contentions were raised in the earlier CRP No.4916 of 2012 and those contentions were turned down by this Court, for any reason while exercising power under Article 227 of the Constitution of India against the revision petitioner, against the orders passed in petition

filed under Rules 230 and 231 of Civil Rules of Practice by the claimants, and it amounts reviewing the Order of this Court.

15. At this stage, it is relevant to refer a judgment of the Apex Court in *Land Acquisition Officer and Assistant Commissioner and another v Shivappa Mallappa Jigalur and others*[3].

A similar question regarding the power of the Executing Court to travel beyond the decree came up for consideration and the Apex Court held that the Executing Court cannot travel beyond the decree and pass an order setting the Order passed by the Civil Court. In the facts of the above judgment, the Civil Court declined to grant Solatium and interest and the same was confirmed by the appellate Court. But the Executing Court based on the judgment of Apex Court reported in *Gurpreet Singh v Union of India*[4], claimed interest, but the Apex Court did not accept the contention since the trial Court and the appellate Court declined to award interest, on the principle that the Executing Court cannot go beyond the decree, dismissed the Civil Appeal before the Apex Court.

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[3] 2010 12 SCC 387
[4] (2006) 8 SCC 457

16. In another judgment of Apex Court reported in *Shankara Cooperative Housing Society Limited v M. Prabhakar and others*[5], though it pertains to a matter under different enactment, the Apex Court held that the Executing Court cannot go beyond the decree and pass appropriate Order.

17. The similar question came for consideration before the Apex Court in another judgment reported in *Gurpreet Singh's* case referred supra. Here, in the facts of the above judgment, the Civil Court and the Appellate Court declined to award interest and other benefits, but the claimants claimed interest before the Executing Court. The Executing Court did not interfere with the order passed by the trial Court on the principle that Executing Court cannot go beyond the decree. If the principle laid down in the judgment is applied to the present facts and circumstances of the case, the jurisdiction of the Executing Court is limited and it cannot go beyond the decree and modify the orders passed by the Civil Court, which were confirmed by the Appellate Court or by this Court in a Revision Petition, since it amounts to reviewing the Order passed by the Civil Courts in earlier occasions. Therefore, on this ground alone, the Executing Court is not expected to uphold the

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[5] AIR 2011 SC 2161

contention raised by the learned counsel for revision petitioner.

18. The Orders under challenge before this Court are the Orders passed by the Executing Court in a petition filed for issuance of cheques under Rules 230 and 231 of Civil Rules. According to Rule 230 of Civil Rules i.e.,

Payment by way of crossed cheques:-,

> " *In all cases where money is payable to a party the cheque petitions are ordered in favour of such party or parties at any stage of the proceeding sin the court or while interlocutory orders are passed by the original court, or while implementing orders of appellate or revisianal courts, the money so payable shall be paid by drawing a crossed cheque (Account payee) in the name of the party or parties to whom the money is payable or the lawful guardian, in the name of the party or parties to whom the money is payable or the lawful guardian, in case the payee is a minor, upon proper identification of the said party in such manner as the court may think fit and in such cases the lodgement schedule shall be endorsed with an order for payment to the person or persons so entitled, in the manner prescribed above signed by the judge and with an acknowledgment of receipt, signed by the payee or payees and satisfaction pro-tanto of the decree or order, if any, in pursuance of which money is paid shall be entered-up.*
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> *231: Application for payment out in other cases:- Except as provided by Rules 230 and 240, payment of money out of court shall be made only upon the order of the Judge made at the hearing of a suit, appeals, or matter, or upon an interlocutory or execution application, supported by affidavit showing how the applicant is entitled to receive payment".*

As per Rules 230, 231 of the A.P. Civil Rules of Practice, the duty of the Executing Court is to follow the procedure prescribed under Rules 230 and 231 of the A.P. Civil Rules of Practice, 1980, But, in the present case, though the revision petitioner raised several contentions beyond the scope of Rules 230 and 231 of the A.P. Civil Rules of Practice, the Executing Court turned down those contentions on the ground that those contentions were raised earlier and attained finality in view of the order passed by this Court in C.R.P.No. 4916 of 2012. Therefore, the Order passed by the Executing Court in E.A.No. 18 and 19 of 2016 in E.P.No.53 of 2007 in OP No.94 of 1991 on the file of I Senior Civil Judge, City Civil Court, Hyderabad, filed under Rules 230 and 231 of the A.P.Civil Rules of Practice do not suffer from any illegality warranting interference of this Court while exercising power under Article 227 of the Constitution of India.

19. One of the contentions raised by the learned counsel for revision petitioner is that this Court can modify the Orders by exercising power under Article 227 of the Constitution of India, though it is supervisory in nature, either passed by Subordinate Courts or Tribunals. This Court can exercise power if the Subordinate Courts or Tribunals passed an Order exceeding its jurisdiction conferred on it or any Order passed based on the jurisdiction, which is not vested on it or passed any order illegally. But here, based on the orders passed by the Civil Court, which were confirmed by the Appellate Court and in view of the findings in the Order in Revision No.4917 of 2012 in the petitions filed under Rules 230 and 231 of the Civil Rules of Practice, this Court while exercising power, which is supervisory in nature, under Article 227 of the

Constitution of India, cannot interfere with the Orders passed by the Civil Court, confirmed by the Appellate Courts, and this Court cannot decide the issues raised in the revision petitions against the Orders passed under Rules 230 and 231 of the Civil Rules of Practice about the entitlement of the claimants to recover additional market value, interest and soletium, in terms of Section 11 (6) and 26 of Urban Land Ceiling Act read with Land Acquisition Act either in respect of surplus land or in respect of retainable land i.e., protected land, since it amounts to modifying the original award passed by the Civil Court, which is upheld by Appellate Court in CCCA No.138 of 1999 and CCCA No.170 of 2001.

20. Sri R.S. Murthy, learned counsel for revision petitioner would contend that in view of the Judgment in *Bai Dosabi's case,* referred supra), the petitioners are not entitled to claim benefits when the land was acquired under section 11(6), 26 of E r/w 4 (1) of C.A r/w 4 (1) of Land Acquisition Act held as follows:

> Shri Vakil finally submitted that the contract had become impossible of performance as a result of the enactment of the Urban Land (Ceiling & Regulation) Act 1976. It is true that s. 5(3) of the Act prohibits every person holding vacant land in excess of the ceiling limit before the commencement of the Act from transferring such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement as prescribed by the Act and a notification has been published after the prescribed procedure has been gone through. The Actcame into force subsequent to the passing of the decree by the High Court. The question for our consideration is what is the effect of the Urban Land (Ceiling & Regulation) Act, 1976 on the decree passed by the High

> Court. While it is true that events and changes in the law occurring during the pendency of an appeal require to be taken into consideration in order to do complete justice between parties and so that a futile decree may not be passed. It is also right and necessary that the decree should be so moulded as to accord with the changed statutory situation. The right obtained by a party under a decree cannot be allowed to be defeated by delay in the disposal of the appeal against the decree, if it is possible to save the decree by moulding it to conform to the statutes subsequently coming into force. These propositions emerge from the decisions of the Court in Pasupulti Venkateswarlu v. The Motor & General Traders, and Rameshwar & Ors. v. Jot Ram & Ors. The question, therefore, is how the decree passed by the High Court can be saved and given effect. S.21 of the Urban Land (Ceiling & Regulation) Act, 1976, provides that where a person holds any vacant land in excess of the ceiling limit and such person declares within the prescribed time and in the prescribed manner before the competent authority that the land is to be utilized for the construction of dwelling units, for the accommodation of the weaker section of the society in accordance with any scheme approved by the specified authority, then the competent authority may after due enquiry declare such land not to be excess land and permit such person to continue to hold the land for the said purpose subject to the prescribed terms and conditions."

In view of the principle in the above judgment, the decree must be in conformity with the provisions of Urban Land Ceiling (Regulation) Act and compensation payable to the decree holder must be in accordance with the provisions of the Act, but that question does not arise in the present revision petition since it is a petition filed under Rules 230 and 231 of the A.P. Civil Rules of Practice and apart from that, in the earlier round of litigation, identical objections were turned down by this Court, which operates as *res judicata.*

21. In view of my foregoing discussion, I find no grounds to interfere with the Orders passed by the Executing Court in E.A.Nos.18 and 19 of 2016 in E.P.No.53 of 2007 in OP No.94 of 1991 on the file of I Senior Civil Judge, City Civil

Court, Hyderabad since the Orders passed by the Executing Court are in accordance with law.

22. Accordingly, these two Civil Revision Petitions are dismissed. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 07-09-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.2122 & 2132 of 2016

Dt. 07-09-2016

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