

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.3429 of 2016
Along with CRP.MP.Nos.5603 & 6056 of 2016
and
C.R.P.No.4281 of 2016

COMMON ORDER:

The land of an extent of Ac.1.57 in R.S.No.602/02 of Surampalli Village of Gannavaram Mandal was acquired for a public purpose. Two sets of parties staked a claim for compensation and hence a reference was made to the Principal Senior Civil Judge, Gudivada, under Section 31(2) of the Land Acquisition Act, 1894. The reference was numbered as L.A.O.P.No.7 of 2010 and both sets of parties were issued with notices.

2. Though both sets of parties received notices from the Principal Senior Civil Judge's Court, one Mr. Gumpena Srinivasa Rao alone filed a claim statement. Nerella Venkata Subrahmanyeswara Rao, who was shown as the 2nd respondent in L.A.O.P.No.7 of 2010 did not file any claim statement and hence he was set ex parte.

3. After the reference was taken on file, the wife of the 1st claimant-G. Srinivasa Rao, who filed a claim statement, was impleaded as a party to the proceedings. Similarly the minor son of the 1st claimant-G. Srinivasa Rao, was also impleaded as the 4th respondent in the main O.P.

4. In other words, the rival claim was between Gumpena Srinivasa Rao-1st claimant, his wife and his minor son on the one hand and Neerella Venkata Subrahmanyeswara Rao on the other hand.

5. Since the 2nd claimant-Venkata Subrahmanyeswara Rao was set ex parte, the reference Court proceeded with the trial and passed an award on 11.09.2012 declaring the wife and minor son of the 1st claimant as the original owner of the acquired land, on the basis of a Will dated 11.10.1996, marked as Ex.R.1.

6. The 2nd claimant-Venkata Subrahmanyeswara Rao, who filed application under Order IX Rule 7 C.P.C, did not pursue the said application for reasons which we are not presently concerned with. But after the award, he moved an application under Order IX Rule 13. The same was dismissed by the reference Court, forcing the 2nd claimant to move a miscellaneous appeal in C.M.A.No.7 of 2016 before the XI Additional District Judge, Gudivada.

7. Along with the appeal, the 2nd claimant also filed a stay petition in I.A.No.703 of 2016. During the pendency of the stay petition, the 2nd claimant realized that the name of the minor son of the 1st claimant was wrongly mentioned as Ramesh instead of Ganesh. Therefore, the 2nd claimant, who was the appellant in C.M.A.No.7 of 2016 also moved an application in I.A.No.774 of 2016 for amendment of the cause title so as to correct the name of the minor son of the 1st claimant as Ganesh instead of Ramesh.

8. By an order dated 21.06.2016 the lower appellate Court posted the matter for further hearing, without granting a stay of withdrawal of the amount. Similarly, in the application for amendment the lower Appellate Court passed an order dismissing the same on the ground that it was a dilatory tactic.

9. Therefore, as against the action of the lower Appellate Court not granting a stay in I.A.No.703 of 2016, the 2nd claimant has come up with C.R.P.No.3429 of 2016. Similarly as against the dismissal of the amendment application in I.A.No.774 of 2016, the 2nd claimant has come up with C.R.P.No.4281 of 2016.

10. Pending the civil revision petitions the revision petitioner, who is the 2nd claimant in original O.P., has filed one more application in C.R.P.M.P.No.5603 of 2016 for amendment of cause title. The 1st claimant has also come up with a similar application in C.R.P.M.P.No.6056 of 2016.

11. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner in both the revision petitions, and Mr. M. Durga Prasada Rao, learned counsel for the 3rd respondent in both the revision petitions.

12. The very fact that both the petitioner as well as the respondents want the name of the minor son of the 1st claimant, who was 4th respondent in O.P.No.7 of 2010, to be amended shows that his actual name is Gumpena Ganesh as was reflected in the cause title in the judgment of the reference Court. It is in the lower Appellate Court that a mistake has been committed. The lower Appellate Court should not have numbered the appeal when the cause title did not tally. If the lower appellate Court or the reference Court has taken care not to number the appeal with a wrong cause title, the necessity for filing an application for amendment would not have arisen. Therefore, this is a case where too many mistakes have been committed by all parties put together. If so, the allegation of protracting the litigation does not lie at the door of only one of the parties to the litigation. Hence the amendment applications are to be allowed. Therefore, C.R.P.M.P.Nos.5603 and 6056 of 2016 are allowed.

13. As I have pointed out earlier, the name of the 4th respondent was correctly reflected in L.A.O.P.No.7 of 2010. It appears that in the application under Order IX Rule 13, the name was wrongly mentioned. The reference Court should have taken care to see that the application is returned for the improper cause title. If that has been done, the original sin would have been rectified at the first stage itself. Therefore, the lower Appellate Court was wrong in disallowing the application for amendment. Hence, C.R.P.No.4281 of 2015 is allowed, the order of the lower Appellate Court is set aside and I.A.No.774 of 2016 is allowed.

14. Coming to the next C.R.P., refusal of the Court below to grant a stay pending the appeal, is not correct. Once stay is not granted, the 1st claimant, his wife and minor child would automatically be entitled to

take away the compensation. Thereafter, the fight will become unequal between persons claiming title to the same property acquired by the respondents. Therefore, the revision petitioner, who is the 2nd claimant, is entitled to stay.

15. Now there are two alternatives available to this Court. First is to grant a stay and allow the 1st Appellate Court to decide the regular appeal arising out of dismissal of the application under Order IX Rule 13 and the second is to cut short the proceedings and allow the petitioner to go back to the reference Court, file a claim petition and have the dispute adjudicated on merits.

16. The learned counsel for the respondents has an objection to the second course of action. In fact his objection all along has been that the revision petitioner has been protracting the proceedings. Therefore, by adopting the second course of action it will be his turn to protract the proceedings.

17. Since the second course of action is not acceptable, I have no alternative except to adopt the first course of action. Hence C.R.P.No.3429 of 2016 is allowed. An interim stay is granted in favour of the revision petitioner. The lower Appellate Court is directed to dispose of C.M.A.No.7 of 2016 in accordance with law, within a period of three months from the date of receipt of a copy of this order.

5. As a sequel, pending miscellaneous petitions if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

25th November, 2016
Js.

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Date: 25-11-2016

Js.