

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.129 of 2016
and C.M.P.No.682 of 2016

The Special Tahsildar
Land Acquisition (Unit-III)
Tamil Nadu Housing Board Schemes
Nandanam, Chennai-600 035.

.. Petitioner

Vs.

R.Mani Naicker

.. Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 23.11.2015 passed in E.A.No.4474 of 2015 in E.P.No.7 of 2010 in L.A.O.P.No.66 of 1986 on the file of the City Civil Court, (VI Assistant Judge) Chennai.

For Petitioner : Mr.T.Jayaramaraj
Additional Govt. Pleader

For Respondent : Mr.David Tyagaraj

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 23.11.2015 passed in E.A.No.4474 of 2015 in E.P.No.7

of 2010 in L.A.O.P.No.66 of 1986 on the file of the City Civil Court, (VI Assistant Judge) Chennai.

2.The petitioner has acquired the property of the respondent for Tamil Nadu Housing Board. The award has been passed on 31.12.1982. Thereafter, the matter was referred under Section 18 of the Land Acquisition Act for enhance the land value namely, L.A.O.P.No.66 of 1986, in which, the value of the land has been enhanced to Rs.300/- per cent on 05.11.1990. Then the respondent has filed E.P.No.7 of 2010 for realisation of Rs.7,45,264/- along with interest stating that the enhanced amount has not been paid by the petitioner. The petitioner herein has filed a detailed counter, but he did not appear before the Executing Court. The Executing Court has ordered attachment. Therefore, the petitioner has preferred E.A.No.4474 of 2015 to raise the order of attachment dated 19.06.2015 under Order 21 Rule 106(3) C.P.C. The Executing Court has dismissed the application as not maintainable by holding that the petitioner has to file the application within thirty days from the date of order. Against which, the present revision is preferred.

3.Learned counsel for the petitioner would submit that they had deposited the excess amount of Rs.29,376/- in the execution petition. Even though they filed a counter, the Executing Court without considering the same, has ordered attachment. Hence, he filed the application only for raising the attachment order dated 19.06.2015, not for setting aside the exparte order. But the Executing Court after considering the objections filed by the respondent/decree holder dismissed the application holding that the application has to be filed within thirty days from the order of attachment. But no question of limitation arises in the application. Therefore, he prays for allowing the revision.

4.Resisting the same, learned counsel for the respondent/claimant would submit that the application was filed under Order 21 Rule 106 C.P.C. to raise the attachment order dated 19.06.2015. But the petitioner ought to have filed the application to set aside the exparte order of attachment within 30 days. That factum was rightly considered by the Executing Court. Hence, he prays for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The petitioner has acquired the property of the petitioner for Tamil Nadu Housing Board. The award was passed on 31.12.1982. After the matter was referred under Section 18 of the Land Acquisition Act for reference, the value of land was enhanced. Then the respondent has filed E.P.No.7 of 2010 for realisation of the enhanced amount stating that the enhanced amount has not been paid by the petitioner. The petitioner herein has filed a detailed counter, but he did not appear before the Court. Hence, the petitioner was set exparte and attachment was ordered. Therefore, the petitioner has preferred E.A.No.4474 of 2015 under Order 21 Rule 106(3) C.P.C. Admittedly, attachment has been made on 19.06.2015. In the application, the petitioner has wrongly mentioned the date as 13.08.2015. In para-6 of the order, the Executing Court has discussed the above aspect.

7. It is pertinent to note that E.A.No.4474 of 2015 was filed under Order 21 Rule 106(3) C.P.C. So it is appropriate to incorporate the same, which runs as follows:

“106 (1)

(2)

(3) An application under sub-rule (1) shall be

made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.”

8. On perusing the affidavit filed in support of the application, in para-2 and 3, it is stated by the petitioner that they had deposited the excess amount in the execution petition, as per their calculation memo. But the petitioner did not give any reason as to why he did not appear before the Court on 19.06.2015. Furthermore, the property was acquired in the year 1975 and the award was passed in the year 1982 and from that year onwards, the respondent/claimant has been running from pillar to post to get the enhanced amount. In such circumstances, the Executing Court has considered all the aspects in proper perspective and came to the correct conclusion. So I do not find any reason to set aside the fair and decretal order passed by the Executing Court and that it is hereby confirmed. Consequently, the Civil Revision Petition is dismissed.

9.In the result, the Civil Revision Petition stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2017

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To

VI Assistant Judge
City Civil Court
Chennai.

R.MALA,J.

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