

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.3969 OF 2017

ORDER:

The 1st defendant in O.S.No.67 of 2013 in the Court of VI-Additional District Judge at Kurnool challenges the order dated 07.07.2017 in I.A.No.346 of 2016 as illegal and amounts to arbitrary exercise of jurisdiction conferred on the trial Court.

Respondents 1 to 3 herein filed O.S.No.67 of 2013 for recovering damages from revision petitioner herein. The claim for damages is founded on the allegation that respondents 1 to 3 are owners of land measuring Acs.01-48 Cts in Sy.No.86 of Vamasamudram Village. The revision petitioner during and in the course of executing H.N.SS canal dumped soil excavated from canal work in Sy.No.86. On account of dumping of soil, the petitioner claims damages. The revision petitioner is contesting the suit by filing detailed written statement. While the matters stood thus, I.A.No.346 of 2016 is filed for appointment of advocate commissioner to inspect the land in Sy.No.86 along with Surveyor and Engineer both for noting down the physical features, Surveyor to identify the land and Engineer to submit report on the effort and expenditure required for removing the dump. The revision petitioner opposed the appointment of advocate commissioner. Hence, the revision.

The trial Court, having regard to the fact in issue for decision between the parties, stage of the suit and after being satisfied that the report of advocate commissioner would throw further light on

the controversy between the parties, appointed advocate commissioner. The findings of the trial Court read thus:

“.....During the course of cross examination, P.W.1 deposed that the suit land was not acquired by the government for formation of canal but the excavated earth from the canal was dumped into their land. It was suggested that the excavated earth from the canal was placed by the defendants in the land that were acquired by the government but not in their land. The said suggestion coupled with the pleadings of the defendants show that adjacent to the canal there is acquired land by the government and that the excavated earth was placed in the said land but not in the land of the plaintiff. Therefore, the main controversy between the parties to the suit is whether excavated earth was dumped into the government land adjacent to the canal or into the land of the plaintiff. The suit is one for damages as the land could not be cultivated due to the dumping of earth and the appointment of advocate commissioner is for localization and to note physical features of the suit land which will no way amount to gathering evidence or granting pre-trial decree. It is the specific case of the plaintiff that their land was not acquired by the government and that their land is adjacent to the canal being dug by D1 and D2. In the circumstances, the localization of suit land to note the existence of dumped earth therein will certainly help the Court for adjudicating the real controversy between the parties. Insofar as the estimation of cost for removal of earth from the land of the plaintiff is concerned, the same cannot be entrusted to commissioner and to prove the same the petitioner have to let in evidence. Therefore, I am inclined to allow the petition only for the purpose of localization of the suit land with regard to the revenue records and to note the physical features of the suit land”

The revision petitioner challenges the order appointing advocate commissioner for the purpose referred above. The revision petitioner except reiterating the stand in the counter affidavit firstly has not satisfied this Court on infirmity in the order

impugned in the revision. On the contrary, this Court is satisfied, particularly having regard to the reasoning now emphasized by this Court that discretion available with the trial Court is exercised and no exception to this discretion is pointed out. The scope of revision under Article 227 of the Constitution of India is well defined and in the case on hand, none of the grounds available, even in the scope of limited judicial review, is made out.

The revision fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

11th August 2017

Lrkm



S.V.BHATT,J