

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5209 OF 2011

ORDER:

This Civil Revision Petition, under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C'), is filed challenging the order, dated 28.06.2010, in E.P.No.76 of 2008 in L.A.O.P.No.44 of 1991, passed by the Senior Civil Judge, Narsapur.

2. The aforesaid Execution Petition was filed under Order XXI Rule 2 (1) and Order XXI Rule 43 read with 151 C.P.C., to issue Rule 43 notice and attach the petition schedule property and later issue the sale notice and sell the same in public auction after setting the terms under Rule 66 C.P.C. The said application was allowed. Challenging the same, the present revision petition is filed the petitioner/judgment debtor.

3. In the present revision, the grievance of the petitioner is that the calculation arrived at by the respondents/decree-holders, which was accepted by the Executing Court, is not in accordance with law and thereby, the Executing Court exceeded its jurisdiction in accepting the calculation arrived by the respondent/decree holders, hence prayed to set aside the impugned order.

4. Learned counsel for the petitioner though explained the defect in the calculation arrived at by the decree holders, certain aspects like additional market value etc., have to be considered in detail. Moreover, the counsel for the respondents/decree holders supported his contention based on the calculation memo filed by the decree-holders 2 to 7, before the Executing Court.

5. The Executing Court in para 11 of its order observed as follows:

“A perusal of record, reveal that the decree holders have already filed part satisfaction memo for the amount of Rs.68,367/- which is already deposited by the judgment debtors. However, the calculation memo filed by the decree holders go to show the calculation after deducting amount paid by the land acquisition officer, the judgment debtor is liable to pay Rs.2,91,955.03 ps. and the rate is calculated as directed by the Hon’ble High Court of Andhra Pradesh at Rs.18 per square yard which is also accepted by the judgment debtor and the same is also shown in the calculation memo filed by the respondents and the total acquired land is Ac.0.51 cents and each square yard when calculated at Rs.18 per square yard and the interest for the respective dates was rightly arrived at Rs.2,91,955.03 by the decree holders.”

6. Though the Executing Court concluded that the calculation arrived at by the decree-holders at Rs.2,91,955.03 ps., is correct, no reason was assigned. In fact, the only dispute is with regard to calculation of additional market value, calculation of rate of interest on compensation amount at 9% per annum and 15% per annum on the enhanced land value. Those variations though pointed out before the Executing Court in the calculation memos filed by both the decree-holders and the judgment debtor, the Executing Court did not advert to the variations in the calculation memos, but accepted the calculation arrived at by the decree-holders at Rs.2,91,955.03 ps without assigning any reason. When both parties are disputing a particular aspect i.e., with regard to calculation, it is for the Executing Court to assign reason for accepting the calculation arrived at by the decree-holders adverting to the variations in both the calculation memos. But the Executing Court did not do so and simply accepted the calculation memo filed by the decree-holders without recording any reason.

7. Therefore, the order passed by the Executing Court is cryptic and bereft of any reason, in the absence any reason, the order passed by the

Executing Court is not sustainable. Hence, the finding recorded by the Executing Court in accepting the calculation memo arrived at by the decree-holders is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the matter is remanded to the Executing Court to decide the variations in the amount adverting to each head i.e., compensation, interest etc., shown in the calculation memos filed by both parties and decide the exact amount due to the decree-holders by the petitioner and on such arrival, the Court may order attachment of the property of the petitioner/judgment debtor for recovery of amount due, if any, after proper calculation of the amounts, within two months from the date of receipt of a copy of this order, without seeking any further extension of time, after giving opportunity to both the parties to explain the discrepancies.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed. No costs.

M. SATYANARAYANA MURTHY, J

JUNE 02, 2017
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Date: 02.06.2017

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