



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN**C.R.P. (NPD) (MD) No.783 of 2015 and**
M.P. (MD) No.1 of 2015 & C.M.P. (MD) No.3671 of 2018

1. The District Collector,
Office of the District Collector,
Kokkirakulam, Palayamkottai Taluk,
Tirunelveli District.

2. The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

... Petitioners/Respondents/
Respondents/Defendants 2 & 3

-vs-

1. Kannan
2. The General Manager
Works Section
Office of Regional Manager,
Railways, Thailkadu,
Tiruvanthapuram.

... 1st Respondent/Petitioner/
Petitioner/Plaintiff

... 2nd Respondent/1st
Respondent/
1st Respondent/1st Defendant

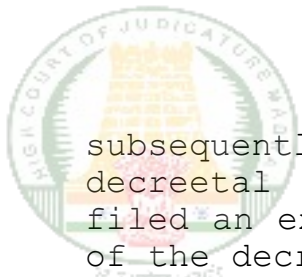
PRAYER: Civil Revision Petition filed under Section 115 of the Civil procedure Code praying to set aside the Fair and Decretal order dated 05.02.2015 made in E.A.No.20 of 2013 in E.P.No.2 of 2006 in O.S.No.187 of 2000 on the file of the learned Principal District Munsif Court, Valliyoor, Tirunelveli District by allowing this Civil Revision Petition.

For Petitioners: Mr.Aayiram K.Selvakumar
Addl. Govt. Pleader

For R1 : Mr.R.John Sathyan
For R2 : Mr.S.Manohar

O R D E R

The 1st respondent herein is the plaintiff in O.S.No.187 of 2000 on the file of the learned Principal District Munsif Court, Valliyoor, Tirunelveli District and in the suit, the plaintiff sought for payment of compensation of Rs.25,000/- among various other reliefs. The suit was decreed in favour of the plaintiff on 06.02.2003 and though appeal was preferred against the said order,



subsequently by the appeal was dismissed, thereby confirming the decretal order dated 06.02.2013. Thereafter, the plaintiff had filed an execution petition in E.P.No.2 of 2006 for due execution of the decree granted in his favour and the Execution Petition was closed based on the submission of the Government Advocate on 12.03.2010 with liberty to restore the same. Since there was no further response from the Government, the plaintiff had filed E.A.No.20 of 2013 for restoration of the Execution Petition, which was allowed in favour of the plaintiff. Aggrieved by the same, the petitioners/defendants 2 & 3 are before this Court.

2. It is the case of the revision petitioners that the 1st respondent herein / plaintiff had not challenged the acquisition proceeding in a manner known to law and the decree passed in O.S.No.187 of 2000 was not enforceable in the eye of law. The Civil Court jurisdiction is completely barred as per the provisions of Section 14 of the Tamilnadu Patta Passbook Act, 1983 and Sections 14 and 43 of Railways Act, 1989. It is the further case of the petitioners that the order of attachment of the Office of Tahsildar, Radhapuram is unsustainable in law and moreover, the petition itself is not maintainable for non-joinder of necessary parties. The plaintiff cannot be considered as an owner on the basis of mere conditional assignment passed by the Assistant Commissioner of Land Reforms, Tirunelveli.

3. The revision petitioners state that the competent authority to take a decision with regard to allotment of alternative place to the 1st respondent is only the Assistant Commissioner (Land Reforms), who is not added as a party in the suit. Contending that the Collector or the Tahsildar is not vested with the power of assignment and therefore, the mechanical attachment of the office of the Tahsildar is non est in law, it is prayed that the order of the Trial Court is liable to be dismissed.

4. The above submission is highly refuted by the learned counsel for the plaintiff / 1st respondent herein, that having agreed to assign the land in favour of the plaintiff before the Execution Court through Government Advocate, the petitioners have now been attempting to deviate from such statement. The suit is of the year 2000 and still, the petitioners have not taken any steps to obey the order and decree passed on 06.02.2003. He has stated that unless or otherwise the Execution Petition is reopened, it is highly impossible for the decree to be executed and thus, it is submitted that this petition has to be dismissed on imposition of heavy costs on the petitioners for wasting the precious time of the Court.

5. Heard the learned counsel on either side and also perused the material documents available on record.



6. A close scrutiny of the entire facts and circumstances of the case would unfold that it is the main case of the revision petitioners, as put forth by the learned Additional Government Pleader that once they have no jurisdiction to assign the land, they cannot be directed to do so and in this regard, the undertaking given by the Government Advocate before the Civil Forum attained nullity, thereby the decree has become absolutely an unenforceable one. This Court finds much force in the contention raised by the learned Additional Government Pleader inasmuch as before ordering attachment of the office of Tahsildar, the procedures have to be strictly followed and it is not known as to whether any notice had been served to the Government under Section 80 CPC, in the absence of which, a public office cannot be simply attached.

7. On 11.07.2018, this Court had directed the Secretary to Government, Land Acquisition Department, Fort St. George, Chennai to come with a concrete decision regarding either payment of compensation or allotment of alternate site to the 1st respondent herein, pursuant to which, a copy of the proceedings dated 18.07.2018, issued by the District Revenue Officer has produced before this Court, wherein it has been stated that an alternate land in S.No.1628/1C1 has been allotted to the 1st respondent herein.

8. In view of the above, the order of the Trial Court dated 05.02.2015 restoring E.P.No.2 of 2006 so as to give life to the attachment order dated 10.12.2007, is liable to be set aside.

9. In the result,

a) this Civil Revision Petition is allowed and the order dated 05.02.2015 made in E.A.No.20 of 2013 in E.P.No.2 of 2006 in O.S.No.187 of 2000 by the learned Principal District Munsif, Valliyoor, Tirunelveli District, is hereby set aside;

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)

To:

1. The Principal District Munsif,
Valliyoor,
Tirunelveli District.



2. The District Collector,
Office of the District Collector,
Kokkirakulam, Palayamkottai Taluk,
Tirunelveli District.

WEB COPY

3. The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

COPY TO

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC To MR.R.JOHN SATHYAN, Advocate SR. NO.74498
+1 CC To MR.S.MANO HAR, Advocate SR. NO. 74627

C.R.P. (NPD) (MD) No.783 of 2015
23.07.2018

AR
TR/RSK/SAR-IV(22.10.2018)4P 8C