

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.5420 of 2017

ORDER:

Heard Ms.Sangeeta Rani holding for Sri C.Avani Reddy, learned counsel for petitioner.

The 1st respondent/claimant No.1 in L.A.O.P.No.13 of 2011 is the revision petitioner. The respondent herein filed I.A.No.1149 of 2014 for appointment of an Advocate Commissioner to note down the existence of pipeline and its location with the assistance of Mandal Surveyor. The revision petitioner opposed the application. The trial Court, after taking note of over all view of the matter and having felt the necessity of assistance of a report from Advocate Commissioner exercised its jurisdiction and discretion and allowed I.A.No.1149 of 2014. Hence, the revision.

The counsel for petitioner vehemently challenges each one of the observations and conclusions recorded by the trial Court. Firstly, it is contended that the appointment of an Advocate Commissioner amounts to collection of evidence, which the trial Court ought not to have been done having regard to the *inter se* disputes between respondents 1 and 2. Secondly, it is contended that the respondent herein was unsuccessful in earlier round of litigation namely O.S.No.29 of 2017 etc., and the findings recorded therein substantially demonstrate that the claim of respondent herein is completely untenable. Thirdly, it is contended that the application is filed

only to drag on and to create confusion in what is otherwise clear and simple for decision by the Court.

On the other hand, Sri Alladi Ravinder, counsel for respondent, contends that the issue in LA.O.P.No.13 of 2011 is payment of compensation and adequate compensation for laying pipeline. The substantive issue between the parties in fact is whether a pipeline is passing through claimant No.1 or claimant No.2. The trial Court, which is having jurisdiction over determination of compensation, after appreciating the circumstances, appointed Advocate Commissioner. This Court ought not to under Article 227 of the Constitution of India upset the discretion exercised by the trial Court and prays for dismissing the revision.

Though the prayer centres around a small aspect, namely appointment of an Advocate Commissioner, still the counsel have put forward their submissions with force. Therefore, this Court considers it apt to refer to them and also to the extent required to record its findings.

The parties herein are before the Senior Civil Judge, Peddapalli, for determination and payment of compensation for laying pipeline. The further issue that arises for consideration is whether the pipeline now laid or in existence passes through the land of one or the other party.

May be that the title to the respective lands claimed by claimants can be a matter for verification and consideration by

the trial Court from the oral and documentary evidence brought on record by the parties. Even assuming that the title is satisfactorily established by both the claimants, still the larger question that needs the attention of the trial court is payment of compensation to only such of the claimant through whose land the pipeline is passing through. The learned trial Judge, while exercising the discretion, had allowed I.A.No.1149 of 2014.

This Court is of the view that the identification of land by the Advocate Commissioner is supplemented provided the same is undertaken in the presence of surveyor with reference to village, field map, survey map etc.

The petitioner and respondent are given liberty to file their respective work memos for satisfactory completion of the local inspection and file report by the Advocate Commissioner.

With the above observation, the Civil Revision Petition is dismissed. The Advocate Commissioner files his report within four weeks from the date of receipt of work memos and the trial court is directed to dispose of L.A.O.P.No.13 of 2011 within a period of two months thereafter. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

S. V. BHATT, J

Dt: 27-02-2018
Prv

