

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6626 of 2017

ORDER:

1) The present revision is filed under Section 115 of C.P.C. by the Andhra Pradesh Industrial Infrastructure Corporation Limited, Hyderabad, questioning the order dated 17.10.2017 passed in E.P.No.133 of 2014 in L.A.O.P.No.7 of 1992 on the file of the Principal Senior Civil Judge, Kakinada, wherein an order came to be passed to sell the E.P. schedule property.

2) The brief facts are as under:

The respondents 1 and 2 herein, who are the decree holders, filed O.P.No.7 of 1992 under the provisions of the Land Acquisition Act, 1894. The Land Acquisition Officer fixed an amount of Rs.63,000/- per acre towards the market value. Being not satisfied with the same, decree holders filed an application to refer the matter to the civil Court. On reference, the same came to be numbered as O.P.No.7 of 1992, wherein the market value was enhanced to Rs.97,650/- per acre. Aggrieved by the same, decree holders carried the matter to the High Court by filing L.A.A.S No.612 of 2000. Vide judgment and decree dated 13.08.2002, this

Court further enhanced the market value to Rs.1,06,400/- per acre, solatium at 30%, additional market value at 12% interest at 9% for the first year and thereafter 15%. As the judgment debtor failed to pay the amount, decree holders filed E.P.No.178 of 2010 seeking realization of the decretal amount ie. Rs.21,11,716/-. By an order dated 23.04.2013, the Court below allowed the said E.P. directing the judgment debtor to deposit the amount of Rs.21,11,716/- on or before 11.06.2013, failing which the decree holder was given liberty to re-open the petition and recover the above amount. With the said observation, the E.P. was closed. Since the judgment debtor failed to comply with the order dated 11.06.2013, the present E.P. came to be filed for recovery of the said amount.

A counter came to be filed by the judgment debtor contending that the decree holders miscalculated the award amount intentionally and that no amount is due to the decree holders.

3) After considering the rival submissions, the Court below held that there are no legal impediments to sell the E.P. schedule property for realization of Rs.22,73,395/- including costs of the present E.P.. For filing sale papers,

the time was extended till 08.11.2017. Challenging the same, the present Civil Revision Petition came to be filed.

4) Learned counsel for the petitioner would submit that the decree holders miscalculated the amount and they are not entitled to interest on solatium and that the judgments debtor has already paid the entire amount on 02.11.2006. Hence, pleads that the decree holders are not entitled to claim any amount.

5) Relying upon the judgment of the Apex Court in *Gurpreet Singh V. Union of India*¹ learned counsel for the respondents/decree holders would submit that the decree holders are entitled to interest on Solatium also, as the Court did not specifically refer to the question of interest on solatium. He further submits that earlier, the decree holder filed E.P.No.178 of 2010, which was allowed on 23.04.2013 and the same was challenged by filing a Civil Revision Petition before this Hon'ble Court. Therefore, pleads that the petitioner cannot question the calculation made and the order passed in this E.P.

6) As seen from the record, earlier the decree holders filed E.P.No.178 of 2010, which was allowed on 23.04.2013, directing the judgment debtor to pay an amount of

¹ (2006) 8 SCC 457

Rs.21,11,716/- on or before 11.06.2013. It was also ordered that if the judgment debtor failed to deposit the above amount, the decree holders are at liberty to file re-open petition for recovery of the above amount. The argument of the learned counsel for the petitioner that the decree holders are not entitled for the said amount appears to be incorrect as the executing Court has already decided the quantum of the amount to be paid in E.P.No.178 of 2010. As the judgment debtor failed to comply with the conditions imposed in the earlier execution proceedings, the decree holders filed another E.P.No.133 of 2014 seeking recovery of the said amount with subsequent interest.

7) Later, aggrieved by the order passed in E.P.No.178 of 2010 and batch, the judgment debtor filed civil revision petition (SR) Nos. 19998 of 2014 and Batch before this Hon'ble Court and the same are pending.

8) By an order dated 10.03.2015, this Court in CRP SR No.19998 of 2014 and Batch passed the following order:

“Heard learned Standing Counsel for Andhra Pradesh Industrial Infrastructure Corporation Limited and Sri M.Pammohan. Learned counsel for the petitioners would submit that the executing Court has posted the matter to 13.03.2015.

The proceedings may go on, but no property of the petitioners which is attached may be put to sale by public auction before 20.03.2015. Post on 17.03.2015.”

9) As seen from the order, this Court granted stay for a limited period. The counsel for the petitioner failed to file any proof to show extension of the stay granted by this Court. But fact remains that the said civil revision petitions are still pending before this Hon’ble Court.

10) It is to be noted that in the earlier proceedings the executing Court directed the judgment debtor to deposit Rs.21,11,716/- on or before 11.06.2013. If the judgment debtor failed to deposit the above amount, liberty was given to the decree holders to re-open the petition for recovery of the said amount. Hence, the present execution petition came to be filed. After filing of E.P.s, Civil Revision Petitions came to be filed challenging the order passed in the earlier E.P.s. As there was no extension of the interim stay granted by this Court; and since the judgment debtor failed to deposit the said amount, the decree holders have every right to proceed with the case by filing the E.P. seeking recovery of Rs.21,11,716/- with subsequent interest. As such, I see no grounds to interfere with the impugned order.

11) Apart from that, the plea of the petitioner in all these cases is that the trial Court committed an error in calculating the quantum of compensation to be paid. On the other hand, the plea of the respondents herein is that the petitioners are barred from raising such a plea, as it has already been adjudicated and has become final. It has been further urged that plea of *res judicata* applies even to E.P. proceedings. Having regard to the above, it would be useful to refer to Explanation VII to Section 11 of the Code of Civil Procedure, which reads as under:-

“Explanation VII: The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question of arising in such proceeding and a former proceeding for the execution of that decree.”

12) In *Maqbool Alan Khan v. Mst. Khodaija and others*² the Apex Court after referring to the judgment of the Apex Court in *Mahijibhai v. Manibhai*³ held that “the principle of *res judicata* applies even to execution proceedings”.

² AIR 1966 SC 1194

³ AIR 1965 SC 1477

13) In *Ganpat Singh (dead) by LRs v. Kailash Shankar and others*⁴, the Apex Court held as under:

“There can be no doubt that when an application for setting aside the sale is made, the order passed by the executing court either allowing or dismissing the application will be final and effective subject to an appeal that may be made under the provisions of the Code. It is inconceivable that even though no appeal has been filed against an order dismissing an application for setting aside the sale, another application for setting aside the sale can be made without first having the order set aside. Such an application will be barred by the principle of *res judicata*.”

14) In *Ameena Amma (dead) through LRs and others v. Sundaram Pillai and others*⁵ the Apex court held as under:

“It is settled law that the general principles of Section 11 of the Code of Civil Procedure apply to execution proceedings as well but the basic criteria for applying the principles of *res judicata* is that the order must be between the same parties and that the matter should have been heard and decided by such Court.”

15) The Apex Court in *Barkat Ali and Another vs. Badrinarain (Dead) Lrs.*,⁶ at paragraphs 11 and 13, held as under:

"11. There is no dispute and it has not been agitated that the order for proceeding by the judgment under

⁴ (1987) 3 SCC 146

⁵ (1994) 1 SCC 743

⁶ (2008) 4 SCC 615

Order XXI Rule 22 amounts to a decree under Section 47 of CPC and it is appealable as a decree i.e to say it is not an appeal against the interim order but an appeal against the decree which is provided against the final order. It means that at the different stages of the execution, orders passed by the executing court have attained finality unless they are set aside by way of appeal before the higher forum. Otherwise they bind the parties at the subsequent stage of the execution proceedings so that the smooth progress of execution is not jeopardised and the stage which reached the finality by dint of various orders of the Order XXI, operates as res judicata for the subsequent stage of the proceedings. Since the order passed at different stage itself operates as a decree and is appealable as such, the same cannot be challenged in appeal against subsequent orders also, because appeal against an order passed under Order XXI Rule 22 does not amount to appeal against order at initial stage, but amounts to a decree finally determining the question. That is why no appeal against orders made under Order XXI has been provided under Order 43.

13. The principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same Court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage."

16) In view of the judgments referred to above, the provisions of Section 11 of the Code of Civil Procedure applies even to execution proceedings also. As the issue

raised in the present revision and the civil revision filed against the order in E.P.No.178 of 2010 are directly and substantially the same and also between the same parties and since the stay in the revision filed against the order in E.P.No.178 of 2010 is not in force, I have no hesitation in holding that the plea raised now is barred by "*res judicata*".

17) For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

02.05.2018
gkv



JUSTICE C. PRAVEEN KUMAR

