

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.3027 of 2012 and
M.P.No.1 of 2012

Heerachand (died)

1. Bappulasha
2. Jeenraj
3. Naveenkuar
4. Suseela devi
5. Chandanbal
6. Rajmathi

... Petitioners

Vs.

Special Tahsildar
Adi-Dravidar Welfare Department,
Tindivanam.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.09.2011 passed in I.A.No.43 of 2011 in CMA No.7 of 2005 by the Principal Subordinate Judge, Tindivanam.

For Petitioners

: Ms. N.Mala

For Respondent

: Mr.S.Jaganathan, Gov. Advocate

ORDER

The present civil revision petition is filed against the order passed in I.A.No.43 of 2011 in CMA No.7 of 2005 on the file of the Principal Subordinate Judge, Tindivanam. The petitioners filed the above petition for refund of court fee under Section 70 of the Court Fees and Suits Valuation Act.

2. The case of the revision petitioners is that the father of the petitioners 1 to 3 and 5 and 6 and the husband of the 4th petitioner namely D.Heerchand filed an appeal against the acquisition of his land under Act 31/1978. Their further contention is that Mr.D.Heerchand was under the wrong impression that the land was acquired by the respondent under Act 31 /1978 and that the petitioners subsequently came to know that the lands were acquired only under Adidravidar Welfare Scheme. He therefore, prayed for refund of court fees.

3. The respondent, the Special Tahsildar, Adi-dravidar Welfare Scheme, Tindivanam filed a counter affidavit contending that the averments of the petitioners that Mr.D.Heerachand, original petitioner, by mistake, filed an appeal on the impression that his lands were acquired under Act 31/1978 is false. His further contention is that the petitioners

cannot plead ignorance since they filed two writ petitions before the High Court in W.P.No.567/1991 and W.P.No.568/1991, which were dismissed. He therefore prayed for dismissal of the petition.

4. The learned Principal Subordinate Judge, Tindivanam after analysing the records had concluded that the petitioners are not entitled for refund of court fees.

5. A perusal of the records shows that one Mr. D.Heerchand, father of the petitioners 1 to 3 and 5 and 6 and the husband of the 4th petitioner filed the CMA No.7 of 2005 for enhancement of compensation. Mr.S.Jaganathan (Government Advocate), learned counsel for the respondent would contend that though the petitioners contended that the civil miscellaneous appeal is not maintainable as their lands were acquired under the Central Act, the present petitioners, who were impleaded in the CMA No.7 of 2005 after the death of Mr.D.Heerachand, as his legal heirs, cannot now contend that they came to know that the appeal was filed due to inadvertent mistake.

6. The learned Principal Subordinate Judge had opined that though filing of CMA is wrong, payment of court fee is correct and there is

nothing to show that the court fee was paid inadvertently or negligently. He therefore, dismissed the petition.

7. Ms.N.Mala, learned counsel appearing for the petitioners relied on the decision in ***Azhoorunnissa Begum Sahiba Vs. T.Mohammed Ali Shaib and another reported in 1962(1) MLJ 331*** and contended that since Section 70 of the Court Fees and Suits Valuation Act, 1955 is a benevolent provision and that there is no warrant for restricting its applicability to mistakes other than mistakes of procedure. He would further contend that a mistake which arises as a result of the adoption of an erroneous procedure with the consequent payment of court fees appropriate to that procedure would be covered by the term "mistake" under the section and a refund could be ordered.

8. It is to be pointed out that the petitioners' father had entrusted his case to an advocate along with the land acquisition order passed by the respondent. His counsel had filed CMA No.7 of 2005 under the Act 31/1978 for enhancement of compensation. The court should have verified the same before numbering the petition and if the same is not properly filed, the court should have returned the petition to the petitioners' father for filing the same before proper forum. Both the

counsel for the petitioners and the court failed in their duty and the petitioners, who are laymen cannot be burdened with erroneous payment of the court fees of Rs.42,732.50. Merely because two writ petitions filed by the father of the petitioners were dismissed, it cannot be contended that the petitioners had filed the CMA No.7 of 2005 even after knowing the correct procedure. In the circumstances, it is just and necessary to refund the court fees to the petitioner.

9. Accordingly, the civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed. The orders passed by the trial court is set aside.

18.06.2019

Index : Yes/No

Internet : Yes/No

Speaking/non-speaking order
mst

To

1. The Principal Subordinate Judge, Tindivanam.

R.HEMALATHA,J.
mst



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