

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.83 of 2012 and 4632 of 2012 and
M.P.No.1 of 2012

In CRP No.83 of 2012

John Demasthanese Britto ... Petitioner

Vs.

1. The Pondicherry Housing Board,
Rep. by its Chairman,
Anna Nagar, Pondicherry.
2. Pauline Chinnaraj
by Power agent Durairaj,
Anna Nagar, Pondicherry.
3. The Land Acquisition Officer-cum-
The Deputy Collector (Revenue)
Karaikal. ... Respondents

In CRP No.4632 of 2012

John Demasthanese Britto ... Petitioner

Vs.

1. The Land Acquisition Officer-cum-
The Deputy Collector (Revenue)
Karaikal.
2. The Pondicherry Housing Board,
Rep. by its Chairman,
Anna Nagar, Pondicherry. ... Respondents

PRAYER in CRP No.83 of 2012: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 30.11.2011 and 22.12.2011 in un numbered E.A.No.-- of 2011 in E.P.No.37 of 2007 in A.S.No.48 of 2002 by the District Judge, Karaikal.

PRAYER in CRP No.4632 of 2012: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 02.04.2009 passed in E.P.No.89 of 2007 in LAOP No.5 of 1992 by the Additional District Judge, Pondicherry at Karaikal.

For Petitioner : Ms R.T.Shyamala (in both CRP)

For Respondents - Mr.T.P.Manoharan (Senior Counsel)

for Mr.K.P.Jotheeswaran

for R1 in CRP No.83/2012

- No appearance for R3 in CRP 83/2012

- Mr.D.Ravichandran, Government Pleader

for R1 in CRP No.4632/2012

- Mr.T.P.Manoharan, Senior counsel

for R2 in CRP 4632/2012

COMMON ORDER

The civil revision petitioner in both the civil revision petitions is the judgment debtor in E.P.No.37/2007 in LAOP No.5 of 1992 and petitioner in Review petition No.3/2009 in E.P.89/2007 in LAOP No.5/1992 on the file of the Additional District Judge, Pondicherry at Karaikal.

2. The revision petitioner's lands were acquired by the Land Acquisition Officer cum Deputy Collector, Karaikal through a notification under Section 4(1) of the Land Acquisition Act. Subsequently, an order of acquisition under Section 6 of the Land Acquisition Act was passed and the Land Acquisition Officer had fixed the award amount as Rs.4232/- per Are. At the instance of the revision petitioner and his mother, the matter was referred under Section 18 of the Land Acquisition Act to the civil court and numbered as LAOP No.5/1992. The civil court after recording evidence, passed an award in the LAOP at Rs.15,064/- per are and determined the compensation as Rs.25,27,244/- Out of the said amount, the civil revision petitioner and her mother were entitled to a sum of Rs.18,95,433/- as their share. After deducting the compensation of Rs.8,91,801/- awarded by the Land Acquisition Officer, the balance compensation payable to the petitioner and his mother was Rs.10,03,632/- along with statutory interest.

Thereafter, the Land Acquisition Officer filed an appeal in A.S.No.1097 of 1993 before this court and as per the order of this court, a sum of Rs.12,00,000/- was deposited in a nationalized bank as fixed deposit. This court allowed the A.S.No.1097 of 1993 and remanded back the matter to the District Judge, Karaikal to consider the case afresh. Thereafter, the District Judge, Karaikal fixed the award as Rs.15,500/- per Are. Thus, the total compensation amount payable by the Government was fixed at Rs.43,54,654/-.

3. Once again, the Land Acquisition Officer filed an appeal in A.S.No.49 of 2002 before this court and a Division Bench of this court fixed the land value as Rs.10,600/- per Are.

4. In the meanwhile, the revision petitioner and his mother withdrew a sum of Rs.17,50,000/-. Therefore, the Division Bench of this court in A.S.No.49 of 2002 observed that the excess amount paid by the government shall be recovered from the revision petitioner and his mother. Accordingly, the Pondichery Housing Board filed E.P.No.37 of 2007 before the District Judge, Karaikal for recovery of the excess amount drawn by the revision petitioner and his mother. In fact, the Division Bench of this court while reducing the compensation amount from Rs.15,500/- to Rs.10,600/-

per are, had observed that the revision petitioner and his mother should refund the excess amount within a period of 30 days, failing which, they have to pay the said amount along with interest at the rate of 15% per annum. However, the revision petitioner claiming that the Pondicherry Housing Board should have to refund a sum of Rs.11,09,107/- to them, filed an E.P.No.89 of 2007 before the Additional District Judge, Puducherry at Karaikal. The learned Additional District Judge, dismissed the E.P.No.89 of 2007 filed by the revision petitioner and allowed the E.P.No.37 of 2007 filed by the Pondicherry Housing Board.

5. Thereafter, the revision petitioner filed a review petition No.3 of 2009 before the Additional District Judge, Pondicherry at Karaikkal to review the order dated 02.04.2009 made in E.P.No.89 of 2007. The said application was dismissed by the learned Additional District Judge, Pondicherry at Karaikkal on 10.12.2009. Aggrieved over the same CRP No.4632 of 2012 is filed.

6. In the execution petition No.37 of 2007 filed by the Pondicherry Housing Board/ decree holder, the properties of the revision petitioner/judgment debtor were brought for sale for realisation of the excess amount drawn by them. When sale date was fixed, the revision

petitioner filed an unnumbered E.A.-- of 2011 in EP No.37 of 2007 under Order XXI Rule 66 of the Code of Civil Procedure requesting the court to pass an order fixing a portion of the suit property that would be sufficient to meet the decretal amount in pursuance of the Engineer's valuation certificate dated 29.11.2011. The said application was returned by the District Judge, Karaikal on 22.12.2011, contending that since the sale date was already fixed, the petition filed by the revision petitioner/judgment debtor was not maintainable at that stage. Aggrieved over the same, CRP No.83 of 2012 is filed.

7. Rule 66(2)(a) of Order XXI of the Code of Civil Procedure mandates the executing court to consider the value of the property in entirety and if it finds that sale of a portion of the property would be adequate to satisfy the decree without deviation from the rules and procedure, it shall bring such portion of the property to sale. In case if the executing court does not advert to the said rule and the entire properties is brought in auction and the same was sold, the sale would get vitiated by material irregularity.

8. It is also to be pointed out that Order XXI Rule 54 (1-A) of the Code of Civil Procedure mandates that the court should require the judgment debtor to attend the court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale. Form 24 of Appendix-E 2nd para envisages the mandate. It is a reminder to the court that it has a statutory duty to issue notice to the judgment debtor before settlement of the terms of proclamation of sale. Then only, the proviso to Rule 66(2) would come into play dispensing with multiplicity of notice.

9. Here, it is not the case of the revision petitioner that he was not served with notice before proclamation of sale. A perusal of the records shows that the sale date is also fixed. At that stage, the judgment debtor had filed an unnumbered E.A.-- of 2011 in E.P.No.37 of 2007 to set apart a portion of the property for sale mainly on the ground that the total value of the entire property is Rs.2,77,00,000/-. It is further contended that the upset price is fixed at Rs.40,00,000/- which according to the judgment debtor is too low. As already observed, the learned District Judge, Karaikal returned the petition questioning the maintainability of the petition, at the stage, when the sale date is fixed.

10. At this juncture, it is relevant to extract Order XXI Rule 66 of the Code of Civil Procedure.

66. Proclamation of sales by public auction. (1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.

(2) Such proclamation shall be drawn up after notice to the decree holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible.

(a) the property to be sold or, where a part of the property would be sufficient to satisfy the decree, such part;

When the judgment debtor received the notice and was given an opportunity to state the time and place of sale of the property to be sold, the judgment debtor without availing the said opportunity, had filed an unnumbered EA.../2011 that too after the fixing of sale date. This clearly goes to show the intentions on the part of the judgment debtor. The

judgment debtor has not also indicated the extent of the land which should be demarcated.

11. At this juncture, it is relevant to point out that as per the orders passed by the Division Bench of this court in A.S.No.49 of 2002, the value of the acquired land was fixed at Rs.10,600/- per Ares. The Additional District Judge, Puducherry at Karaikkal had calculated the amount due and payable by the revision petitioner to the Pondicherry Housing Board as Rs.20,11,747/-. Thereafter, the petitioner has filed a review petition No.3 of 2007 in E.P.No.89 of 2007 in LAOP No.5 of 1992 and the learned Additional District Judge, Puducherry at Karaikkal vide his fair and decreetal orders dated 10.12.2001 had dismissed the petition by observing that

" 8. The order of the Hon'ble High Court passed in A.S.No.49/2002, dated 28.02.2003 was also perused by me. The order of the Hon'ble High Court in paragraphs 25 to 28 of the judgment was also narrated by the 2nd respondent in the counter statement filed in the E.P.89 of 2007. I have also perused the calculation memos filed by both the parties and I find that the calculation memo filed by the respondent is in accordance with law

and also filed on the basis of the judgment of the Hon'ble High Court dated 28.02.2003 in A.S.No.49 of 2002.

9. This court had passed an order on 02.04.2009 in accordance with law and also in accordance with the judgment of the Hon'ble High Court. I do not find any patent error or any other reason to modify the same. Hence, the reason stated in the review petition is not at all maintainable in law. If really the petitioner is aggrieved against the order of this court dated 02.04.2009, he ought to have approach the higher forum for proper remedy as per law. If there is any patent error or mistake was found in the order of this court, this court has ample power to rectify the defects in order to render justice to the parties. As I have already stated, I do not find any merit in the petition and I am not inclined to allow this petition. Considering the facts and circumstances of the case, I am inclined to dismiss this application.

12. A perusal of the orders passed in E.P.No.89 of 2007 in LAOP

No.5 of 1992 by the Additional District Judge, Karaikkal clearly shows that it is a well considered order and it is relevant to extract paragraph No.7 of the said order which reads thus.

" On careful perusal, it is found that the total extent of the property comes to the share of the petitioner is 1 Hec. 18 Ares and 64 Cas. The rate was fixed as Rs.10,600/- per Are. Hence, the land value comes to Rs.12,57,584/- and 30% solatium comes to Rs.3,77,275.20 and 12% additional amount from 13.04.1982 till 31.03.1986 comes to Rs.5,98,811.19. Hence, the total amount comes to Rs.22,33,670.39. The amount already paid was Rs.8,91,801/-. The balance is Rs.13,41,869.39. 9% interest for one year as Rs.9,82,150./-. = Rs.88,393.0 and 15% interest from 19.01.1985 to 4.3.1994 is Rs.9,03,168.77. Hence, the total comes to Rs.23,33,431.66. Amount already received by the petitioner is Rs.35 Lakhs. The excess amount paid is Rs.11,66,568.34 and 15% interest from 28.02.2003 to 28.1.2008 = Rs.9,45,178.76. Hence, the amount to be refunded by

the petitioner is Rs.20,11,747.10."

The learned Additional District Judge had calculated the amount to be refunded by the judgment debtor as Rs. 20,11,747/-. There is nothing to show that the calculation made by him is wrong. In this back drop, it is to be pointed out that the judgment debtor is trying to evade paying the excess amount drawn by him and his mother by way of filing petitions after petitions, which would clearly amount to abuse of process of court. Therefore, both the civil revision petitions are liable to be dismissed.

13. In the result,

(i) CRP No.83 of 2012 is dismissed. No costs. The connected miscellaneous petition is closed.

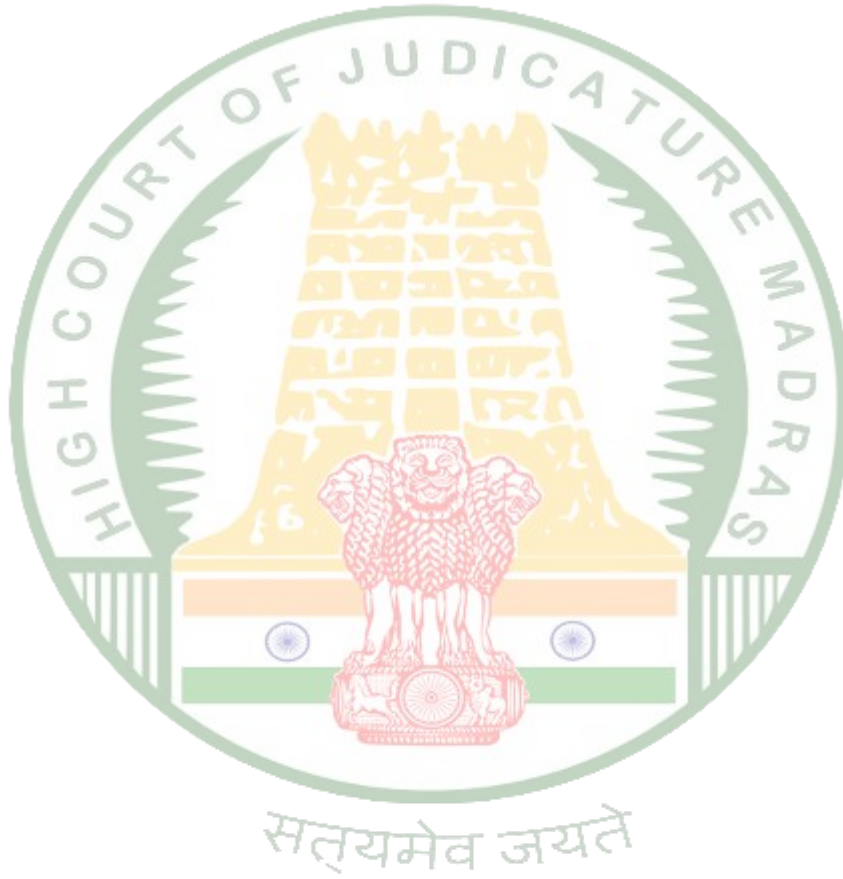
(ii) CRP No.4632 of 2012 is dismissed. No costs.

08.08.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
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To

1. The Additional District Judge, Puducherry at Karaikkal.
2. The District Judge, Karaikal.



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R.HEMALATHA,J.
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M.P.No.1 of 2012

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