

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.429 of 2019

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.02-01-2019 in I.A.No.389 of 2018 in L.A.O.P.No.78 of 1988 of the Senior Civil Judge, Peddapalli.

2. The said O.P. arose out of a reference under Section 18 of the Land Acquisition Act, 1894 (for short “the Act”) made vide letter dt.25-04-1985 of the Land Acquisition officer/Revenue Divisional Officer, Pedapalli in his Award proceedings No.5/87-88 dt.03-08-1987 in respect of the land acquired under Adrial village of Manthani Mandal of Karimnagar District.

3. The said O.P. was disposed of on 21-07-2000 enhancing the compensation awarded by the Land Acquisition Officer in the Award.

4. In the said O.P., claimant No.12 was one Musipatla Venkat Reddy. He died pending the O.P. and on his demise, his wife Madhuramma was brought on record as Class-I legal heir. She subsequently expired on 09-03-2001 leaving the petitioners as her Class-I legal heirs.

5. They therefore filed I.A.No.389 of 2018 claiming equal shares of compensation awarded in respect of Ac.9.29 gts in Sy.No.18/D and

30/D in the above village which was the subject matter of the said Award.

6. By order dt.02-01-2019, the Court below dismissed the said application stating that petitioners ought to have obtained a Succession Certificate under the provisions of the Indian Succession Act, 1925 (for short 'the Act') and since they did not obtain and file it along with the application, it should be dismissed. The Court below rejected the contention of the petitioners that they need not file Succession Certificate as they are claiming compensation under the Act and held that such compensation is classified as 'debt' and provisions of the Act are applicable. It held that the deceased claimant No.12 acquired rights by reason of compensation of his land and after the decree was passed by the competent Court, the claimant had died and so rights of the deceased claimant to claim compensation is a 'debt' that is payable by the Government to the deceased claimant and his legal heirs cannot seek recovery of debt (compensation) without filing a Succession Certificate. It pointed out that in certain cases legal representatives are not brought on record and some of them take away the compensation depriving the other legal representatives of the same, and for that purpose it is necessary that parties should obtain a Succession Certificate. It observed that necessity for obtaining Succession Certificate cannot be waived by the parties and that it indemnifies the payer.

7. Assailing the same, this Revision is filed.

8. A perusal of the order passed by the Court below shows that the Court below had relied on the judgment of a Division Bench of this Court in **Ali Mohammed Khusro and others Vs. The Special Deputy Collector Land Acquisition, Industries**¹, the Division Bench in the said case considered the identical questions which arises in the instant case i.e. (a) whether compensation awarded under the Act is a 'debt' within the meaning of sub-Section (2) of Section 214 of the Indian Succession Act, 1925 and (b) whether Succession Certificate is necessary to recover the same at the instance of the legal representatives of a deceased claimant. After considering several decisions on the point, the Division Bench took a view that Section 214 of the Indian Succession Act, 1925 would be attracted and that a Succession Certificate is necessary. The Bench observed that the definition of the term 'debt' showed in sub-Section (2) of Section 214 is comprehensive enough to include every kind of debt except those excluded from its meaning i.e. rent, revenue or profits payable in respects of land used for agricultural purposes. It observed that when a person is deprived by law of acquisition of his property, he is entitled to be compensated in equivalent to the value of the property acquired; once the Court determines the equivalent value of the property taken over in money, he is entitled to payment of the same; and if the decree is not satisfied, he has a right to execute the decree against the judgment-debtor as in the case of any other debt. The

¹ AIR 1974 AP 18

Bench held that the expression of ‘debt’ in Section 214(2) is of wide amplitude to take in compensation amount payable under the Act.

9. The said Division Bench judgment was also followed by another Division Bench of this Court in **Tella Koteswara Rao and others Vs. Land Acquisition Officer and Special Tahsildar (Land Acquisition), Guntur and others**². It was held in this case as under:

“17. The liability to pay compensation under the Land Acquisition Act arises the moment the land is acquired. It is in respect of that liability that an award is made determining the sum of money payable towards compensation. It is thus a liability or debt to be paid on ascertainment of money equivalent for the property acquired under the provisions of the Act. Since that liability to pay compensation is money is there even before the decree or award of the Court, it falls within the ambit of sub-section (1)(b) of Section 214. The amount payable under the Land Acquisition Act is not a future contingent liability nor an inchoate liability in its embryo stage. The money payable under the Land Acquisition Act is an ascertainable sum. It is, therefore, is liquidated money obligation for the recovery of which an action will lie.”

10. Though learned counsel for petitioners relied upon other decisions of a learned Single Judge of this Court in **G.Shiva Kumari Vs. Md.Nasim and others**³, **L.Sathyanarayana Murthy and another Vs. Land Acquisition Officer, Revenue Divisional Officer, Chittoor**⁴, **Yerukali Chinna Balaiah (died) by L.Rs. Vs. Special Deputy Collector, L.A. Unit, P.J.P., Gadwal, Mahaboobnagar**

² 2009(6) ALD 770 (DB)

³ 1992(3) ALT 458

⁴ 2002(2) ALD 76

District⁵ and J.Kista Reddy and others Vs. Mandal Revenue Officer⁶, in view of the above two Division Bench judgments, which are binding on me, I decline to follow them.

11. The decision in **Sreeram Rangaiah (died) per LRs and others Vs. Gajula Krishnaiah⁷** of another Division Bench cited by the learned counsel for petitioners does not relate to claim by legal representatives of a claimant in L.A.O.P. where compensation was awarded to the claimant. It relates to an Execution Petition in a suit filed for recovery of money against respondent which was decreed wherein the trial Court had refused to entertain an Execution Petition in the absence of Succession Certificate granted in favour of the legal heirs. The Division Bench held that Succession Certificate covers only cases of survivorship where family is a joint Mitakshara family and the amount sought to recovered is an asset of the joint family, and the plaintiff, who claims on basis of survivorship, cannot be compelled to take out a Succession Certificate to enable him to recover the amount. The Bench clarified that where the legal representatives claimed through survivorship and not by succession, there is no necessity to seek any Succession Certificate under Section 214(1)(b) and when the claim rests on succession from the deceased plaintiff/Decree Holder, it mandates them to obtain Succession Certificate.

⁵ 2005(5) ALD 518

⁶ AIR 2005 A.P. 217

⁷ 2006(1) ALD 757 (DB)

12. In the instant case, the property sought to be acquired is self-acquired property of claimant No.12 and it is not the case of the petitioners that it is a Mitakshara joint family property. The claim of the petitioners is only through succession and not by survivorship.

13. Therefore even as per the above decision, the petitioners ought to obtain a Succession Certificate if they intend to withdraw the compensation deposited in the Court below to the credit of the L.A.O.P. They cannot simply file an application to bring them on record as legal heirs in the place of their deceased mother and claim compensation.

14. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

15. Accordingly, the Civil Revision Petition fails and it is dismissed. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-07-2019

Vsv