

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.544 and 663 of 2019

COMMON ORDER:

Heard Sri Srinivas Rao Putluri, counsel for the revision petitioner and Sri P.V.Narayan Rao, counsel for 1st respondent and the Government Pleader for Arbitration appearing for 2nd respondent, in both the Revisions.

2. The State Government had acquired a large extent of land including the area in Survey Nos.892 and 1054 of Tadicherla Village of Malhar Rao Mandal, Karimnagar District for captive mining of coal for power generation under the Land Acquisition Act, 1894 (for short 'the Act') through a Notification issued on 21.12.2006.

3. Thereafter an Award was passed on 24.06.2010 by the Land Acquisition Officer(LAO).

4. Since there were rival claims to the land acquired in both the survey numbers, a reference was made under Section 30 of the Act to the Court of the Senior Civil Judge, Manthani, and it was numbered as OP.No.65 of 2012.

5. Petitioner in both the Revisions was the 2nd claimant and the 1st respondent was 1st claimant in the O.P.No.65 of 2012.

6. By order dt.25.01.2014, the said Court disposed of the said O.P., deciding the claims only in respect of Survey No.1054 but not deciding the claims regarding Survey No.892.

7. Challenging the adjudication in respect of Survey No.1054, the 1st respondent filed AS.No.9 of 2014 before the VI Additional District Judge at Godavarikani and the said appeal was also dismissed on 28.09.2015.

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8. On 14.07.2017, the 1st respondent filed I.A.No.71 of 2017 seeking release of compensation of Rs.3,23,000/- along with accrued interest thereon in respect of Survey No.892 contending that the claim regarding Survey No.892 has not been decided in the O.P.

9. The LAO filed counter also supporting the plea of the 1st respondent and requesting the Court to decide the matter in accordance with law.

10. Petitioner herein filed Memo in the said I.A. through his counsel stating that it had come to the notice of the petitioner that I.A.No.71 of 2017 was posted for arguments and the matter ought to be deferred to another date.

11. On 23.01.2019, the Court of the Senior Civil Judge, Manthani raised an objection that the Memo is not entertainable and that the case was posted for orders on that day.

12. Challenging the action of the Court below in entertaining I.A.No.71 of 2017, CRP.No.544 of 2019 is filed.

13. Counsel for the petitioner contends that the O.P., is no longer pending on the file of the Senior Civil Judge, Manthani by the time I.A.No.71 of 2017 was filed by the 1st respondent; that it had already been disposed of on 25.01.2014, which had also been challenged by the 1st respondent in A.S.No.9 of 2014; and therefore, I.A.No.71 of 2017 was not maintainable and the Court of the Senior Civil Judge, Manthani could not have entertained it, numbered it and then proceeded to decide it.

14. The Government Pleader for Arbitration appearing for the LAO(2nd respondent) on verification from his counter part in the Court below also stated that the O.P. is no longer pending before the Senior Civil Judge, Manthani.

15. In my considered opinion, the Senior Civil Judge, Manthani ought not to have entertained I.A.No.71 of 2017 filed by the 1st respondent with regard to the claims for compensation in respect of land in Survey No.892 at all, since after pronouncing the order in the O.P. on 25.01.2014, the said Court became *functus officio* and had no jurisdiction to entertain any application filed by the 1st respondent with regard to the land in Survey No.892, which had also been acquired. As stated above, in the O.P. the said Court had failed to determine the claims in respect of the said survey number.

16. Therefore, CRP.No.544 of 2019 is allowed; and I.A.No.71 of 2017 on the file of the Senior Civil Judge at Manthani is dismissed as not maintainable. No order as to costs.

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17. Initially petitioner herein had filed a Memo on 23.01.2019 in I.A.No.71 of 2017 stating that the said I.A. was posted for arguments and requested an adjournment to his counsel.

18. The Court returned the Memo as not maintainable.

19. Thereafter, petitioner filed an unnumbered I.A., under Order IX Rule 13 CPC to set aside the *ex-parte* decree dt.25.01.2014 passed in the O.P. and also an application under Section 5 of the Limitation Act, 1963 to condone the delay of 1793 days in filing the application under Order IX Rule 13 CPC.

20. The Court below returned the same with endorsement on 30.01.2019 stating that the O.P. itself had been disposed of on 25.01.2014 on merits and both these applications are not maintainable.

21. Challenging the same, CRP.No.663 of 2019 is filed.

22. Counsel for the petitioner contends that the application under Order IX Rule 13 CPC as well as application under Section 5 of the Limitation Act, 1963, are both maintainable even if the O.P.No.65 of 2012 has been disposed of on 25.01.2014 on merits, since it is the contention of the petitioner that he was set *ex-parte*

and it amounts to an *ex-parte* disposal of the O.P. without hearing the claim of the petitioner.

23. I find considerable force in the said submission.

24. The Court below was not entitled to reject the petition under Section 5 of the Limitation Act, 1963 as well as the petition under Order IX Rule 13 CPC, even though O.P.No.65 of 2012 had been disposed of on 25.01.2014, since the order in the O.P. indicates that the petitioner herein had been set *ex-parte*.

25. Therefore, CRP.No.663 of 2019 is also allowed; the Court of the Senior Civil Judge, Manthani, is directed to entertain and receive both the applications under Section 5 of the Limitation Act, 1963 presented by the petitioner on 24.01.2019 as well as the application under Order IX Rule 13 CPC also filed on the same day by the petitioner; and then after giving notice to 1st respondent as well as the Government Pleader appearing for 2nd respondent in the Court below shall proceed to decide the said applications in accordance in with law. No order as to costs.

26. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

26th June, 2019.
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