

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.08.2020

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD) No.3951 of 2010
and M.P.No.1 of 2010

The Special Tahsildar (LA-2),
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai – 35. ... Petitioner

Vs.

A.Pachai, S/o.Appa Durai ... Respondent

Prayer : Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, to against the order dated 09.02.2010 made in E.P.No.201 of 2001 in L.A.O.P.No.118 of 1987 on the file of the Subordinate Judge at Poonamallee.

For Petitioner : Mr.Y.J.Aravind Gosh,
Government Advocate.

For Respondent : Mr.K.Sivakumar.

ORDER

This petition has been filed against the order dated 09.02.2010 made in E.P.No.201 of 2001 in L.A.O.P.No.118 of 1987 on the file of the Subordinate Judge at Poonamallee.

2. The respondent herein has filed the Execution Petition in E.P.No.201 of 2001 in L.A.O.P.No.118 of 1987 on the file of the Subordinate Judge at Poonamallee. In the said Execution Petition, the respondent has claimed a sum of Rs.1,58,692.55p. and interest till the date of realisation. After the enquiry, the Execution Court has directed the petitioner herein to pay a sum of Rs.1,89,714/- to the respondent herein within one month, failing which, the schedule mentioned properties in the Execution Petition are ordered to be attached. Challenging the said order passed by the Execution Court, the petitioner has come before this Court by way of filing this revision.

3. The learned counsel for the petitioner would submit that the Land Acquisition Board had deposited the entire award amount in the Court as early as on 17.08.1993. Therefore, they are not liable to pay the interest. The respondent herein has to refund a sum of Rs.4,719.20p. which is the excess amount paid by the petitioner. The petitioner has paid a sum of Rs.93,48,581/- to the respondent and also though initially when the matter was called, the respondent has not filled any calculation memo. The respondent

has to pay only the excess amount of Rs.2,199.56p. The Execution Court has failed to consider the fact and simply rejected the submission made by the petitioner herein and directed to pay a sum of Rs.1,89,714/- within one month, even without passing a detailed order. Therefore, the order passed by the Execution Court has to be set aside and the respondent is to be directed to refund a sum of Rs.2,199.56/-.

4. Heard the learned counsel for the petitioner and perused the materials available on record. There is no representation on the side of the respondent.

5. The respondent has filed the Execution Petition before the Subordinate Court, Poonamallee in E.P.No.201 of 2001 in L.A.O.P.No.118 of 1987. In the said Execution Petition, the respondent claimed a sum of Rs.1,58,692.55p. Even the petitioner herein has not filed any counter or objection before the Execution Court, but he has filed only an affidavit stating that the respondent / claimant filed a petition praying for enhancement of compensation of a sum of Rs.67,038/- dated 05.05.1992 and Rs.34,802/- dated

13.08.2008, after deducting the income tax of Rs.3,905/-. The said amount has already been deposited in the Court as per Judgment dated 09.09.1989 and excess amount of Rs.2,199.56 has to be refunded by the respondent/claimant. But the respondent/claimant has filed the Execution Petition praying for further difference amount of Rs.1,89,714/- with interest calculation. In the affidavit filed by the petitioner, it is stated that the order passed by the Execution Court shows that the petitioner herein has filed a calculation memo without calculating the interest. Therefore, the calculation memo filed by the petitioner was not accepted and was directed to pay the claim amount failing which attachment. He has already stated that the petitioner herein has not filed the counter and also he has not filed a copy of the calculation memo before the Execution Court and the record also shows that the respondent has not examined any witness to show the payment made by them. In the Execution Court itself the petitioner has deducted a sum of Rs.67,308/- already deposited before the Court. Though the petitioner has stated that they have paid further sum of Rs.34,802/- dated 13.08.2008 (after deducting Income Tax of Rs.3,905/-) and also not examined any witness and produced any documents and the

Execution Court has also failed to pass the detailed order, obviously the amount claimed by the petitioner as per the details of the calculation and what is the calculation filed by the respondent and what is the difference between the calculation filed by the petitioner and the respondent and simply they have accepted the calculation memo filed by the respondent and stated that the petitioner has not calculated the interest and without calculating the interest they have filed a calculation memo.

6. Therefore, in these circumstances, since the petitioner has not examined any witness and produced any documents before the Execution Court, the order passed by the Execution Court is set aside on the ground that he has not distinguished the calculation memo filed by the respondent. Therefore, the Execution Court is directed to give an opportunity to the petitioner and passed a detailed order regarding the claim made in the Execution Court.

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7. Hence, the Civil Revision Petition is dismissed and the Execution Court is directed to dispose of the case within two months

from the date of receipt of copy of this Order. Consequently,
connected miscellaneous petition is closed. No costs.

14.08.2020

Index:Yes/No
LPP

To

The Subordinate Judge,
Poonamallee

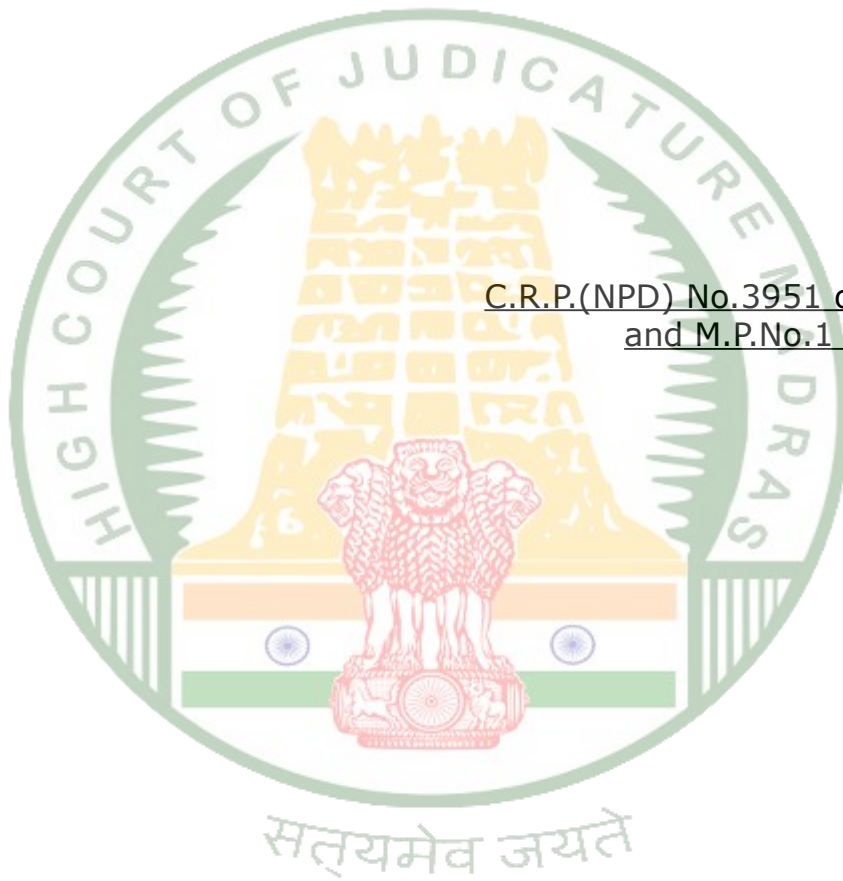


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