

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.3308 of 2011

The Special Tahsildar
Adi Dravidar Welfare
Sathyamangalam.

...Petitioner/Respondent

..Vs..

1. Nagaraja Chettiyar (died)
Rep by the Power Agent V.C.Subramaniam
2. C.Subramaniam
3. S.N.Jayabalan
4. N.Anandalakshmi

(R3 and R4 brought on record as
Lrs of the deceased R1 vide order
of Court dated 12.08.2020 made in
M.P.No.3 of 2013 in CRP.No.3308/2011) ... Respondents/Claimant

Prayer: Civil Revision Petition filed under Section 115 of Civil
Procedure Code against the order dated 28.04.2011 passed in
E.P.No.73/2010 in C.M.A.No.11 of 2000 on the file of Principal
Sub Court, Gobichettipalayam.

For Petitioner : Mr.Y.T.Arvind Ghosh
Additional Government Pleader (CS)
For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the
order dated 28.04.2011 passed in E.P.No.73/2010 in C.M.A.No.11
of 2000 on the file of Principal Subordinate Court,
Gobichettipalayam.

2.The petitioner is the respondent in E.P.No.73 of 2010 in
C.M.A.No.11 of 2000. The respondents 1 and 2 are the
petitioners in said E.P. and the appellants in the C.M.A.No.11
of 2000. The petitioner acquired the land of the respondents 1
and 2 under the Land Acquisition Proceedings. Challenging the
award, the respondents 1 and 2 filed Appeal in C.M.A.No.11 of
2000 before the land Acquisition Tribunal and the said Court has

enhanced the compensation. Subsequently the respondents filed E.P. in E.P.No.73 of 2010 for attachment of the properties belonging to the petitioner. The Execution Court attached the property vide order dated 28.04.2011. Challenging the attachment order passed by the Execution Court, the petitioner has filed the present revision before this Court.

3. The learned Additional Government Pleader would submit that initially the petitioner deposited the original award amount i.e., a sum of Rs.6,19,142/-after calculating the interest and solatium from the date of possession. Subsequently, as per order in E.P.No.226/2002 the petitioner deposited a sum of Rs.4,33,589/- and therefore totally a sum of Rs.10,52,731/- was deposited by the petitioner. But the respondents are claiming interest from the date of 4(1) notification and not from the date of possession. He would further submit that though the petitioner deposited the entire amount, the respondents 1 and 2 filed E.P.for a sum of Rs.3,12,806/-.. It is further stated that the petitioner has given Calculation Memo before the Execution Court stating that entire amount was deposited, but the Execution Court has not considered the said fact and attached the property, which warrants interference.

4. Though sufficient opportunity being given to the respondents,there is no representation on their behalf. Heard the learned counsel for the petitioner and perused the materials on record.

5. Admittedly, the petitioner acquired the lands of the respondents under the land acquisition proceedings and passed an award in award no.1/99-2000 in Na.ka.No.1028/1996 which was in the year 2000 and challenging the said award, the respondents 1 and 2 filed an Appeal before the land Acquisition Tribunal for enhancement of the award. In the said Appeal award amount has been enhanced. Subsequently the respondents filed Execution Petition for attachment of the property of the petitioner and the Execution Court has allowed the said E.P., ordering attachment of the property belonging to the petitioner. Challenging the said order, the petitioner is before this Court. It is seen that even in the Execution Petition itself, the respondents have stated that initially the entire award amount calculating the interest and solatium have already been deposited by the petitioner i.e., Rs.6,19,141/-. Secondly after E.P.No.266/2002 was ordered, a sum of Rs.4,33,589/- has been deposited and in total a sum of Rs.10,52,731/- has been deposited by the petitioner. But, the Executing Court calculated that a balance sum of Rs.2,50,000/- has to be paid by the petitioner and attached a sum of Rs.2,50,000/- for which the learned counsel for the petitioner has stated that they paid

award amount calculating interest from the date of possession till the date of deposit and therefore the petitioner is not entitled to any further interest. He would further submit that after depositing the compensation amount, the respondents have withdrawn the same and therefore they are liable to pay interest only from the date of taking possession till the date of depositing the amount.

6. A reading of the order passed by the trial Court shows that the executing court has not passed any speaking order with regard to the details relating to the filing of Calculation Memo and submissions of the petitioner and respondents and further nothing have been stated about how the execution court came to the conclusion that a balance sum of Rs.2,50,000/- has to be paid by the petitioner. Therefore, the order passed in E.P.No.73 of 2010 dated 28.04.2011 is liable to be set aside.

7. Accordingly the order dated 28.04.2011 passed in E.P.No.73 of 2010 is set aside. However, the matter is remitted back to the Executing Court for deciding the matter afresh. The Executing Court is directed to give due opportunity to both the parties and on receiving fresh calculation Memo from both the parties, the Executing Court is directed to pass detailed order calculating the actual amount, which is liable to be paid by the petitioner and if any balance amount has to be paid by the petitioner, a direction can be given to the revision petitioner to deposit the amount, failing which there shall be an order of attachment. Further, the executing court is directed to dispose of the Execution Petition, within a period of two months from the date of receipt of this order.

With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Principal Sub Court, Gobichettipalayam.
 2. The Section Officer, V.R. Section, High Court, Madras
- +1 cc to The Government Pleader, Sr.No. 28514

C.R.P. (NPD) .No.3308 of 2011

BS (CO)
RMP (04/01/2021)