

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 22.04.2021	Date of Pronouncing Order 28.04.2021
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CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD).Nos.350, 351 of 2018

Neyveli Lignite Corporation Limited,
(Presently M/s. NLC India Limited),
Represented by its Secretary,
Neyveli - 607 801.

... Petitioner in both CRP's

Vs

P.R.Govindarajulu

... Respondent in both CRP's

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution, against the Order dated 19.09.2017 passed in E.P.Nos.5, 6 of 2016 in E.A.Nos.168, 171 of 1992 in L.A.O.P.Nos.112, 113 of 1983 on the file of the Special Subordinate Judge for LAOP Cases, Cuddalore respectively.

For Petitioner : Mr.N.Nithianandam
in both CRP's

For Respondent : Mr.T.R.Rajagopalan Senior Counsel
for P.Veena Suresh
in both CRP's

COMMON ORDER

This Civil Revision Petitions are filed against the Order dated 19.09.2017 passed in E.P.Nos.5, 6 of 2016 in E.A.Nos.168, 171 of 1992 in L.A.O.P.Nos.112, 113 of 1983 on the file of the Special Subordinate Judge for LAOP Cases, Cuddalore respectively, thereby dismissing the Execution Petitions.

2. The petitioner is the decree holder and the petitioner filed Execution Petitions to arrest the respondent in both Execution Petitions for realizing the decree amount as per the Order passed in E.P.Nos.168, 171 of 1992 in L.A.O.P.Nos.112, 113 of 1983 on the file of the Additional Sub Court, Cuddalore. Both the Execution Petitions were dismissed and aggrieved by the same in the present Civil Revision Petitions.

3. The learned counsel for the petitioner submits that the respondent has sufficient means to pay the decree amount, it is established the attitude of the refusal on demand verging on dishonest disowning of the obligation under the decree of the respondent. The conduct of the respondent amounts to refusal or neglect envisages the capacity to pay, but deliberate intention of the non payment. The non payment of the decree amount by the respondent pursuant to the decree passed in E.A.Nos.168, 171 of 1992 amounts to the very few refusal or neglect by the respondent as contemplated under Section 51 of CPC. The respondent also admits the liability to pay the decree amount except certain amount set off the terms of the Judgment and decree passed in A.S.Nos.1285, 1286 of 2003. However, the Court below without considering the same dismissed the Execution Petitions.

4. Per contra, the learned Senior counsel would submits that the respondent is the claimant where the lands have been acquired by the petitioner. There was a reference under Section 18 for Enhancement of the Compensation and enhanced compensation for fixed for the land acquired

by the petitioner. Aggrieved by the same the appeal filed by the petitioner before this Court, as directed by the Hon'ble Supreme Court of India by its Order dated 03.10.1988 directed to deposit amounts in which the respondent had withdrawn 25% of the amount. The order passed in the Restitution Petition is on the basis that the respondent has withdrawn 40% of the compensation amount.

5. He further submitted that the first reference initially before the Sub Court, Chidambaram made under Section 18 of the Land Acquisition Act in L.A.O.P.Nos.178 and 213 of 1980. Both were transferred to the Sub Court, Virudhachalam and re-numbered as L.A.O.P.Nos.131 and 149 of 1981. Again both L.A.O.P's are transferred and re-numbered as L.A.O.P.Nos.112 and 113 of 1983 on the file of the Fast Track Court, Chidambaram. Award has been passed in both the L.A.O.P's and aggrieved by the same the claimant filed appeal suit before this Court in A.S.Nos.1285 and 1286 of 2003 for the same Land Acquisition there was second reference in L.A.O.P.Nos.112 and 113 of 1983.

6. Accordingly on 14.05.1985 award have been passed. Therefore, the respondent filed E.A.Nos.168 and 171 of 1992 and the same was allowed thereby directed the respondent to repay the same of Rs.1,89,884/- with interest at the rate of 12% from 28.10.1988 and Rs.73,334.30/- with interest at the rate of 12% from 24.07.1989 in E.A.No.171 of 1992. The respondent was directed to pay the sum of Rs.2,58,344.05/- with interest at the rate of 12% from 28.10.1988 and for the sum of Rs.99,778.50/- at the rate of interest at 12% from 24.07.1989. On the basis of the said decree the petitioner filed Execution Petition for recovery.

7. The respondent filed objection stating that only 25% deposited by the petitioner was withdrawn and therefore, the claim is not sustainable. In fact, as directed by the Hon'ble Supreme Court of India the petitioner deposited 40% in which the respondent have withdrawn only 25%. Further as per the Order of the Hon'ble Supreme Court of India no other interest is liable to pay by the respondent. Therefore, according to the respondent, the petitioner is under due of Rs.45,671/- payable to the respondent. Therefore, the Execution Court rightly dismissed the Execution Petition and it does not required any interference by this Court.

8. Heard, Mr.N.Nithianandam, learned counsel appearing for the petitioner and Mr.T.R.Rajagopalan, Senior counsel for P.Veena Suresh, learned counsel appearing for the respondent in both Civil Revision Petitions.

9. The land ad-measuring 3.31 Acres situated at Vadakkuvellore Village, Cuddalore District was acquired by the petitioner on 07.09.1979. Another land ad-measuring 4.54 Acres also acquired on 29.09.1979, for the said acquisition award were passed in Award Nos.1, 2 of 1979. Under Section 18 of the Land Acquisition Act there was reference as against both the award in L.A.O.P.Nos.178, 213 of 1980 on the file of the Sub Court, Chidambaram. Both the L.A.O.P's were transferred and re-numbered as L.A.O.P.Nos.121, 149 of 1981 and dismissed for default. The respondent suppressed the said fact and again made reference in L.A.O.P.Nos.112 and 113 of 1982 on the file of the Sub Court, Cuddalore. In the L.A.O.P's the award was enhanced to Rs.65,000/- per acre.

10. The petitioner challenged the Judgment and Decree passed in appeal suit and dismissed the same. Aggrieved by the same, the petitioner preferred the said S.L.P.Nos.11764 and 11765 of 1988 in which directed to deposit 25% of the enhanced compensation in L.A.O.P.Nos.112 and 113 of 1983. Accordingly, the petitioner deposited a sum of Rs.1,58,555.55/- and a sum of Rs.1,16,549.80/- by way of Demand Draft No.012503 dated 27.10.1988 drawn on State Bank of India, Madras. In A.S.Nos.996, 997 of 1985 again as directed by the Hon'ble Supreme Court of India the petitioner deposited 15% the total sum of Rs.1,73,112.80/- before this Court in A.S.Nos.996, 997 of 1985 as deposited amount. Subsequently, both the appeal suits were allowed by this Court. Therefore, they are entitled to refund of the entire amount deposited by them before this Court.

11. On the strength of the Judgment and Decree the petitioner filed E.A.Nos.168, 171 of 1992 for Restitution of the said amount from the respondent. After due contest both the petitions were allowed by the Judgment and Decree dated 09.12.1994 with interest at the rate of 12% per annum from the date of respective deposits. Admittedly, the respondent did

not challenge the same and it had attained finality. On the strength of the said decrees the petitioner filed the present Execution Petitions.

12. Thereafter, the respondent restored the L.A.O.P's which were referred on their first insistence which were dismissed for default in L.A.O.P.Nos.121, 149 of 1981. After restoration both the L.A.O.P's were re-numbered as L.A.O.P.Nos.1 and 2 of 2003 on the file of the Fast Track Court, Chidambaram. The award was enhanced at the rate of 30% per acre with 30% solatium including 9% and 15% interest with the right to the petitioner to set off the amounts already deposited in A.S.Nos.996 and 997 of 1985. Aggrieved by the said Judgment and the Decree the petitioner filed appeal suit in A.S.Nos.1285 and 1286 of 2003 before this Court. Both the appeals were allowed by the Judgment and Decree dated 18.01.2011 and concluded that the respondent is entitled a sum of Rs.2,49,517/- in L.A.O.P.No.1 of 2003 and a sum of Rs.3,42,122/- in L.A.O.P.No.2 of 2003. These amounts have to be set off in terms of the decree dated 09.12.1994 passed in E.A.Nos.168 and 171 of 1992 which were filed by the petitioner to recover the amount which were withdrawn by the respondent in pursuant of the conditional Order passed by the Hon'ble Supreme Court of India. The

said Judgment and Decree had attained finality and no appeal filed by the respondent.

13. The petitioner deposited 25% of the amount as directed by the Hon'ble Supreme Court of India on 28.10.1988 Rs.2,75,105.35/-. Thereafter, the petitioner deposited 15% of the award amount Rs.1,73,112.80/-, in which the respondent had withdrawn 25%. As per the decree passed in E.A.Nos.168 and 171 of 1992 dated 07.09.1992, the petitioner is entitled to get back the amount from the respondent with interest at the rate of 12% per annum from the date of deposit. Therefore, the Execution Court without considering the above dismissed the Execution Petitions.

14. Accordingly, both the Civil Revision Petitions are allowed. The Order dated 19.09.2017 passed in E.P.Nos.5, 6 of 2016 in E.A.Nos.168, 171 of 1992 in L.A.O.P.Nos.112, 113 of 1983 on the file of the Special Subordinate Judge for LAOP Cases, Cuddalore respectively are set aside. Both the Execution Petitions remanded back to the Execution Court only for fixing the amount by calculating the interest as discussed above payable by

the respondent and pass orders accordingly within the period of ***eight weeks*** from the date of receipt of a copy of this Order. There shall be no order of costs.

28.04.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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To

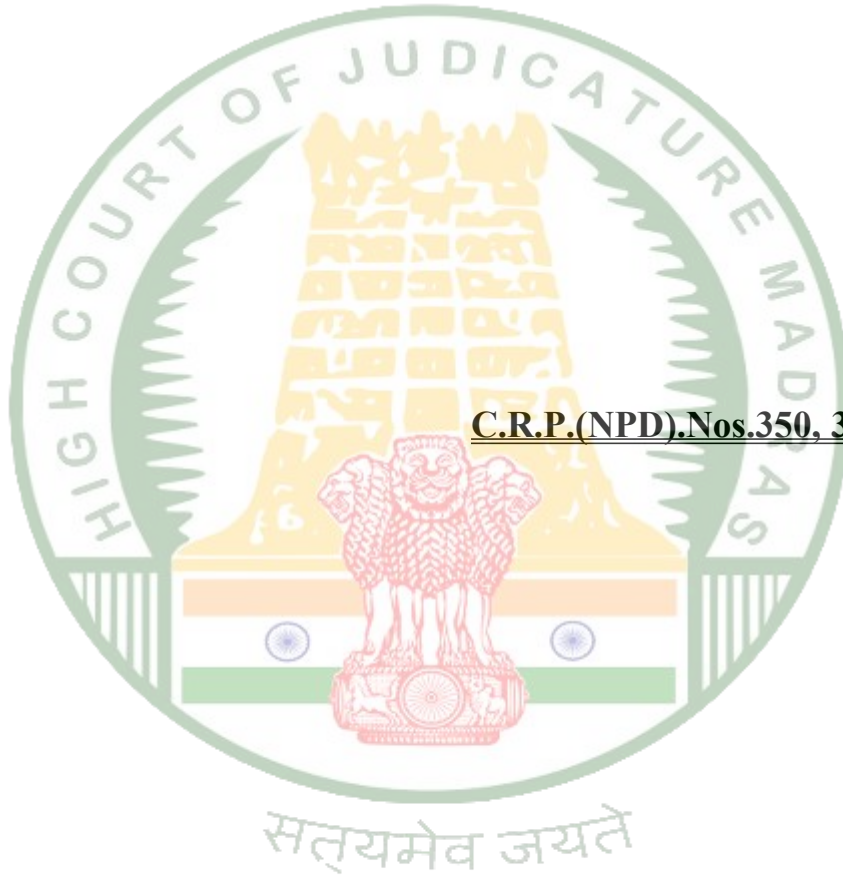
The Special Subordinate Judge,
(for LAOP Cases)
Cuddalore.



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G.K.ILANTHIRAIYAN. J,

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