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C.R.P. (NPD) No.2341 of 2022
and C.M.P. No.12021 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (NPD) No.2341 of 2022
and C.M.P. No.12021 of 2022

1.The Special Tahsildar
(Land Acquisition),
Nallathangal Oodai Neertheekka Thittam,
Dharapuram.

2.The Revenue Divisional Officer,
Dharapuram.

3.The Executive Engineer (PWD),
Amaravathi Basin Division,
Dharapuram.

4.The District Collector,
Thiruppur District,
Thiruppur.

...

Petitioners

versus

1.Palanathal
2.Thenmozhi
3.Gandhimathy

...

Respondents



PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the docket attachment order dated 21.12.2021 and auction sale order dated 05.05.2022 passed by the learned Subordinate Judge (LAOP), Dharapuram in E.P.No.56 of 2019 in L.A.O.P.No.11 of 2009.

For Petitioners : Mr.E.Vijay Anand
Additional Government Pleader

For Respondents : Dr.S.K.Kharventhan,
Assisted by Mr.N.Ponraj.

ORDER

This Civil Revision Petition has been preferred challenging the docket attachment order dated 21.12.2021 and auction sale order dated 05.05.2022 passed in E.P.No.56 of 2019 in L.A.O.P.No.11 of 2009 by the learned Subordinate Judge (LAOP), Dharapuram.

2. The revision petitioners are the judgment debtors, who suffered the decree dated 05.06.2017 made in L.A.O.P.No.11 of 2009. Subsequently, the respondents/decreed holders have initiated execution proceedings in E.P.No.56 of 2019 to recover the decree amount. The mode of recovery was sought under Order XXI Rules 54 and 66 of Code of Civil



Procedure by attaching the properties belonging to the Government of Tamil Nadu and bringing it for Court auction. In the said execution proceedings, the Executing Court, on 30.11.2021 has passed the following order :

" The Petition is filed for execution of the Award dated 05.06.2017 passed in the Land Acquisition proceedings by attachment and sale.

The Respondent filed Counter Statement objecting the petition on the ground that an appeal has been filed with delay before the Hon'ble High Court and pending.

I have heard both sides. Perused the records.

Admittedly, there is no order of stay of the Award by the competent Court and as such I do not find any impediment in proceeding with the execution. It is pertinent to note that the acquisition proceeding is of the year 2009 and the possession was taken in the year 2000. The Respondent has no valid objection to interfere with the execution.

Considering the nature of the Petition and the above facts, this Court is of the view to expedite the execution to enable the decree holder to enjoy the fruits of the Decree.

Accordingly, Attachment is ordered.

Attach by 10.01.2022. Batta in a week."

3. The Execution Court passed the above order to attach the immovable properties belonging to the Government. Aggrieved over the same, the Government / revision petitioners have preferred the present Civil Revision Petition.



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4. Mr.E.Vijayanand, learned Additional Government Pleader appearing for the revision petitioners submitted that the respondents have preferred an appeal with a petition to condone the delay and the same is pending. Before the appeal is disposed, if the petition mentioned properties are sold in a Court auction, that would only bring further complications. The Government is taking sincere efforts to dispose the case as early as possible and hence, the impugned order should be set aside.

5. Dr.S.K.Kharventhan, learned counsel appearing for the respondents submitted that the respondents/claimants had lost the properties due to the land acquisition proceedings initiated before twenty years and they are still not able to recover the compensation, which was fixed at a very meagre rate.

6. The learned counsel for the respondents further submitted that the compensation was enhanced and decree was passed by the learned Subordinate Judge, Dharapuram on 05.06.2017. Even after filing of the Execution Petition, the Government/revision petitioners did not take



care to file the appeals in time. As on today, there is no stay to execute the decree passed against the revision petitioners.

7. In support of his contentions, the learned counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in ***Bhusawal Municipal Council Vs Nivrutti Ramchandra Phalak And Others***, reported in ***[(2015) 14 SCC 327]***. The relevant paragraphs are paragraph No.20, which reads as follows :

" 20. We do not see any justification in the appellant approaching this Court with an object to get an interim order so as not to make any payment of enhanced amount of compensation. Such attitude not only amounts to highhandedness and arbitrariness on its part, rather it may cause serious prejudice to the respondents. The excuse that the appellant Council has paucity of fund cannot be accepted as a justified cause to entertain the petition. If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person aggrieved becomes entitled to get the land restored. Payment of compensation as per award under Section 11 of the 1894 Act, cannot be sufficient security to serve the interest of the person interested pending adjudication of appeal against the Reference Court's award."



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8. By citing the above decision, the learned counsel for the respondents submitted that, in the above said case, the Court held that poor citizens should not be allowed to suffer the exorbitant litigations initiated by the State and that too, after several decades.

9. It is true that, despite the decree has been passed as early as on 05.06.2017, no steps have been taken, even after the execution proceedings were initiated. At least, after the attachment order was passed, the Government could have taken steps to settle the decree amount, instead of filing the appeal with an inordinate delay. The respondents/claimants were not allowed to enjoy the fruits of the decree. As against the Government, the respondents/claimants, who are the average citizens, cannot afford to face long litigations and that too after losing their property for the value fixed by the Government.

10. In the case on hand, the agricultural lands of all the claimants have been acquired. Unless the compensation is paid to them in time, their livelihood will be lost. Even now, the revision petitioners did not give any assurance that the decree amount will be settled. On the other hand,



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it is submitted that the Government is going to file an appeal challenging the award of the learned Subordinate Judge, Dharapuram. It is understandable, if the revision petitioners have settled at least 50% of the decree amount before seeking to set aside the order of attachment. However, the learned Additional Government Pleader has stated that the Government is taking serious steps and hence, it is possible to deposit 50% of the decree amount within a period of one or two months. Taking into consideration of the public interest, I feel a short time can be granted for depositing at least 50% of the decree amount.

11. In the result, this Civil Revision Petition is allowed and the attachment order dated 21.12.2021 and auction sale order dated 05.05.2022 passed by the learned Subordinate Judge (LAOP), Dharapuram in E.P.No.56 of 2019 in L.A.O.P.No.11 of 2009 is set aside on condition that the revision petitioners should deposit 50% of the decree amount to the credit of L.A.O.P.No.11 of 2009 on the file of the Subordinate Court, Dharapuram within a period of two months from the date of receipt a copy of this order, failing which, the benefit of this order will get forfeited. Thereafter, the Execution Court shall at liberty to pass further orders in the



Execution Proceedings. Consequently, connected miscellaneous petition is closed. No costs.

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Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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R.N.MANJULA, J.

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