



C.R.P.NPD.No.1468 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2022

Delivered on: 05.12.2022

The Hon'ble Mrs. Justice **J. NISHA BANU**

C.R.P(NPD).No.1468 of 2017

and

C.M.P.No.6834 of 2017

The National Elementary School,
Nagapattinam, Represented by the
Secretary-cum-Correspondent of
National Higher Secretary School Committee,
having Registered Office at
Leela Street,
Nagapattinam.

...Petitioner/Judgment debtor

Vs.

1.R.M.Sundaram @ Meenakshi Sundaram

2.Rajalakshmi W/o,Santhanakrishnan

..Respondents / decree holders

PRAYER:Civil Revision Petition filed under Section 115 of the Code
of Civil Procedure against the fair and decreetal order of the learned
District Munsif, Nagapattinam dated 14.03.2017 in E.A.No.286 of



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2016 in E.P.No.21 of 2014 in O.S.No.174 of 1986.

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For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.R.Ganesan

ORDER

The respondents are the decree holders and the petitioner is the judgment debtor.

2. This civil revision petition is as against the order passed in E.A.No.21 of 2014 in E.P.No.286 of 2016 in O.S.No.174 of 1986, wherein, the decree holders sought police protection to safeguard their property and to prevent trespass by the petitioner/judgment debtor. The Executing Court in E.P.No.21 of 2014 attached the properties of the judgment debtor. But even thereafter, the judgment debtor with the help of henchmen and power, restrained the decree holder from raising compound wall and therefore, E.A.286 of 2016 has been filed seeking police protection. The learned Judge, Executing Court, on



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elaborate findings, allowed E.A. and granted police protection. As against which, the judgment debtor filed this civil revision petition raising the grounds that though the suit in O.S.No.174 of 1986 came to be decreed on 30.11.1988, proceedings have been initiated for acquisition of the suit property for the benefit of the petitioner school; notification under Section 4(1) has been issued on 11.03.1987, enquiry under Section 5(A) has been conducted on 25.11.1988; declaration under Section 6 has been made on 08.09.1989, notification under Section 7 has been issued on 23.04.1991, Award has been made on 04.09.1991 and the judgment debtor/school already in possession symbolically.

3. It is further contended by the revision petitioner/judgment debtor that entire compensation has also been deposited in Civil Court and the Land Acquisition Officer has referred the matter to the civil court under Sections 30 and 30(2) of the Land Acquisition Act.



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4. The other contention raised is that the executing court ought to have seen that the respondents/decreed holders have suppressed vital facts and the effect of subsequent land acquisition proceedings which have divested the respondents of their claim, if any, over the suit property and have vested the right, title and interest in the property in favour of the judgment debtor/revision petitioner.

5. On the above contentions, the revision petitioner sought to set aside the order of the Executing Court dated 14.03.2017 in E.A.No.286 of 2016 in E.P.No.21 of 2014.

6. The learned counsel for the revision petitioner/judgment debtor in support of his submissions placed reliance on the following decision:-

(1) (2001) 10 SCC 432 [*Municipal Board Vs. Kotdwar*]

In this decision, the Honourable Supreme Court dealt with the matter wherein, the appellant contention was that they were running the



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school on the decretal property and has been functional even since 1957 and it would not be in the public interest to execute the decree and deliver possession over the land, demolishing the school, to the decree-holder. The Supreme Court dismissed the appeal filed by the appellant by observing that the judgment-debtor would be at liberty to invite the attention of the executing court to the letter purported to have been written by C.P.Grover, one of the decree-holders and also invite the executing court to adjudicate upon the right of the decree-holder prosecuting the execution application, to do so, in the light of the letter dated 20.12.1985.

(2) (1973) 1 Supreme Court Cases 37 [M/s.Laxmi and Co. Vs. Dr.Anant R.Deshp.Nde and another].

In this decision, the Supreme Court answered the issue regarding when the Revision Court can take notice of subsequent events under Section 115 of CPC. It is held that the court can take notice of



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subsequent events. But such notice is taken in order to shorten litigation, to preserve rights of both parties and to subserve the ends of justice, for example where the court finds that because of altered circumstances, like devolution of interest, it is necessary to shorten litigation or where the original relief has become inappropriate by subsequent events or when the court finds that the judgment of the court cannot be carried into effect because of the changed circumstances, or when the court finds that the matter is no longer in controversy or that the disputed property is no longer available.

3) (1999) 9 Supreme Court Cases 198. [Municipal Board, Kishangarh Vs. Chand Mal and Co.].

The facts of the above case is that the land in question in respect of which the respondent had obtained a decree for permanent injunction against the appellant, was sanctioned for allotment by the State Government on 28.11.1964 and in pursuance thereof, the Collector,



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Ajmer, executed a ninety nine years lease in favour of the respondent on 16.12.1964. The appellant, municipal board claimed the land to have vested in it as it was not cultivated since 1944. The Supreme court held that “on the question that the lease in favour of the respondent having been cancelled and the land in question having been included in the municipal area, could the decree be still executed is the question which has to be answered by the executing court. “

The Honourable Supreme court, therefore, held that, in the interest of justice, remand the whole case to the executing court which would consider the effect of the two documents namely, the government order dated 1.11.1976 by which the lease in favour of the respondent purports to have been cancelled and the notification dated 22.1.1976 by which the land in question has been included in the municipal limits while rehearing the objections under Section 47 CPC filed by the appellant.



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(4) (2010) 14 Supreme Court Cases 384 [*Arun...lal and others vs.*

Union of India and others]

“..after the resumption of the property and the taking over of the possession by the Union of India in exercise of its rights as the paramount title-holder, it was no longer holding the same as a tenant so as to be answerable to the petitioners as its landlords. The Union of India was on the contrary holding the resumed property in its own right and in a capacity that was different from the one in which it had suffered the decree for eviction. This was a significant change in the circumstances in which the decree was passed rendering it inexecutable.”

.....”That leaves us with the question whether the decree is executable qua the main bungalow itself. We must to the credit of respondents mention that the executability of the decree qua the main bungalow was not assigned or questioned on behalf of the respondents. As a matter of fact, the possession of the main bungalow appears to have been delivered to the decree-holders, which the decree holders will be entitled to retain, till such time, the Union of India issues any further orders of resumption of the property in exercise of



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powers vested in it under the relevant provisions of law. “

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7. It is brought to the attention of this court that the decree holder also filed Writ Petition before this court questioning the acquisition.

8. O.S.No.174 of 1986 was filed by the respondents in this revision petition who are the decree holders. They sought for permanent injunction restraining the revision petitioner/defendant and his men, headmaster, teachers and students from entering into the suit property T.S.No.435/1.

9. After full contest, the suit was decreed as prayed for on 30.11.1988. Against the said decretal of the suit, the defendant/School/revision petitioner herein filed appeal in A.S.No.39 of 1989 and the same was dismissed on 29.06.1989. Against which, the defendant filed Second Appeal S.A.No.2019 of 1989 before this



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court and the same was also dismissed on 18.03.2002.

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10. Thus the lis inter parties became final binding the parties since there was no further appeal by the petitioner to the Honourable Supreme Court of India.

11. The decree holder filed Execution Petition in E.P.No.21 of 2014 on the file of District Munsif, Naapattinam. The executing court ordered for attachment of immovable property on 30.09.2015.

12. Against the attachment, the judgment debtor filed C.R.P.No.4429 of 2015 on the file of this court and the same was dismissed on 26.11.2015. The judgment debtor filed S.L.P.(Civil) No.8402 of 2016 before the Apex Court which was also dismissed on 08.04.2016. The judgment debtor's petition under Section 47 CPC was also dismissed by the Executing Court.



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13. It is pertinent to note that since judgment debtor was causing hindrance to the decree holder for attachment of the property, the decree holder sought for police protection and the same was ordered by the learned Executing Court on 14.03.2017.

14. The learned counsel for the respondents/decreed holder relied on the decision of the Honourable Apex Court in the case of ***Barkat Ali and another Vs. Badri Narain (D) by LRs. (2008020L.W.687)***. In paragraph 10, the Honourable Apex Court held as follows:-

“The Principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial or a Higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings”

The learned counsel for the respondent also submitted that the writ court cannot issue direction against



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individuals and also not interferes with the competent civil court jurisdiction. The learned counsel relied on the decision of the Constitution Bench of Honourable Supreme Court of India in Radhey Shyam and another Vs. Chhabi Nath and others. In paragraph 23 of the said judgment, the Constitution Bench of the Supreme Court held that “We are also in agreement with the view of referring Bench that a writ of Mandamus does not lie against a private person not discharging any public duty...” “Accordingly, we answer the question referred as follows:- (1) Judicial order of Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution.”

Thus the contention of the respondents/decreed holders is that the decree is well executable.

15. The learned counsel also submitted that the revision petitioner/judgment debtor has not raised any averments about W.P.No.31811 of 2014 in the grounds of Revision Petition and so what was not raised therein cannot be raised newly thereafter under



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16. Heard and perused the records.

17. It is a matter of record that the decree in suit in O.S.No.174 of 1986 attained finality. The revision petitioner has no legal possession over the suit property. The execution petition was ordered against the revision petitioner/judgment debtor. The parties are bound by the order of civil court.

18. At the time of admission, this court while ordering notice to the decree holders/respondents, granted interim stay of the order passed in E.A.No.286 of 2016.

19. This court heard the submissions of both sides and gone through the decisions relied on by either side.

20. The suit filed by the plaintiff-respondent herein has been



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decreed. They cannot be deprived of the fruits of the decree. The further proceedings of the execution cannot be stayed for an indefinite period. After unsuccessful in the suit, the opposite party/defendant filed CRP, writ petition and SLP and all those petitions are dismissed. Thus, it is highly inequitable to deprive of the decree- holder of the fruits of decree on the plea of pendency of acquisition proceedings.

21. As per the settled proposition of law, the fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good. The decree must be allowed to be executed, and unless an extra-ordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms so that the earlier decree is not stifled.

22. In the light of the above reasonings, the Civil Revision Petition is dismissed. Stay stands vacated. No costs.



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Index:Yes/No

Speaking Order/Non-Speaking Order

To

1. The learned District Munsif, Nagapattinam.
2. The Section Officer, V.R.Section, High Court of Madras.



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J.NISHA BANU,J.

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