BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.07.2023

DELIVERED ON: 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.415 to 418 of 2013

CRP(MD).No.415 of 2013:

1.The Tmil Nadu Agricultural University
Coimbatore through its Registrar

2.Horticultural College and Research Institute
Periyakulam through its Dean ...Petitioners

Vs

1.Korakkan (died)

2.Sethusuppiraman

3.Dhanuskodi

4.Arumugam

5.Subramanian

6.Thavasi Thevar(died)

7.Karuppayammal

8.Pitchai Servai (died)

9.Angammal

10.Pitchaimani

11.Kalavathi

12.Thavamani

13.The Revenue Divisional Officer
Thamaraikulam Main Road
Periyakulam Taluk
Theni District

14.Saraswathi

15.K.Chandra Kumar

16.Sivakumar

17. Muthukumar

18.Soundravalli

19.Karuppayee

20.Otcha Thevan

21.Chellam

22.Thangammal

23.Saratha

24.Parkavi

25.Mithunpandi

26.Panchavarnam

27.Lakshmi

28.Pushpam

29.Parvathi

30.Velmurugan ....Respondents

Respondents 14 to 18 are brought on record as legal heirs of deceased R1 and Respondents 19 to 25 are brought on record as legal heirs of deceased 6th respondents and Respondents 26 to 30 are brought on record as legal heirs of deceased 8th respondent vide Court order dated 17.04.2017)

CRP(MD).No.416 of 2013:

1.The Tmil Nadu Agricultural University
Coimbatore through its Registrar

2.Horticultural College and Research Institute
Periyakulam through its Dean ...Petitioners

Vs

1.Annaperumayai

2.Dhanalakshmi

3.Kamatchiammal

4.A.L Rengaraj (died)

5.Subramanian Chettiar (died)

6.Ramasamy Chettiar

7.The Revenue Divisional Officer
Thamaraikulam Main Road
Periyakulam Taluk
Theni District

8.R.Subbulakshmi

9.R.Yuvaraj

10.R.Thulasi Mala

11.R.Raj

12.Venkirchar

13.Pericho Prabhu Rangaraj

(Respondents 8 to 13 are brough on record as legal heirs of the deceased 4th respondent vide Court order dated 14.06.2017)

CRP(MD).No.417 of 2013:

1.The Tmil Nadu Agricultural University
Coimbatore through its Registrar

2.Horticultural College and Research Institute
Periyakulam through its Dean ...Petitioners

Vs

Malaiyandi Samban (died)

Perumal (died)

1.Vairavan Samban

2.Velusamy

3.Andi

4.Muniyandi

5.Chinna Muniyandi

6.Kuppaiyandi

7.Anburaj

8.Andammal

9.Perumal

10.Murugeswari

11.Velmani

12.The Revenue Divisional Officer
Thamaraikulam Main Road
Periyakulam Taluk
Theni District ....Respondents

CRP(MD).No.418 of 2013:

1.The Tmil Nadu Agricultural University
Coimbatore through its Registrar

2.Horticultural College and Research Institute
Periyakulam through its Dean ...Petitioners

Vs

Kuppusamy Naicker (died)

Paraman (died)

1.Kamatchiammal

2.Chinnamani

3.Chinnathai

4.Kamaraj

5.Manickam

6.Ponnammal

7.Ponu

8.Muthumani

9.Parvathy

10.Guruvammal

11.Palani

12.Palanisamy

13.Kamatchi

14.Mariammal

15.Patchaiammal

Sanniyasi (died)

16.Rajeswari

17.Minor.Dhinesh

18.Minor.Sathesh

19.Subbammal

20.The Revenue Divisional Officer
Thamaraikulam Main Road
Periyakulam Taluk
Theni District ....Respondents

PRAYER in CRP(MD).No.415 of 2013 : This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, against the fair and final order dated 05.10.2012 made in E.P.No. 40 of 2008 in LAOP.No.23 of 1992 on the file of the Subordinate Court, Periyakulam.

PRAYER in CRP(MD).No.416 of 2013 : This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, against the fair and final order dated 05.10.2012 made in E.P.No. 41 of 2008 in LAOP.No.22 of 1992 on the file of the Subordinate Court, Periyakulam.

PRAYER in CRP(MD).No.417 of 2013 : This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, against the fair and final order dated 05.10.2012 made in E.P.No.42 of 2008 in LAOP.No.23 of 1992 on the file of the Subordinate Court, Periyakulam.

PRAYER in CRP(MD).No.418 of 2013 : This Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, against the fair and final order dated 05.10.2012 made in E.P.No.7 of 2009 in LAOP.No.22 of 1992 on the file of the Subordinate Court, Periyakulam.

CRP(MD).No.415 of 2013:

For Petitioners	: Mr.Veera.Kathiravan Additional Advocate General Assisted by Mr.S.Kadarkarai
For R2 to R5, R7, R9 to R12	: Mr.J.Lawrence
For R3	: Mr.C.Satheesh Government Advocate
For R14 to R30	: No appearance

CRP(MD).No.416 of 2013:

For Petitioners	: Mr.Veera.Kathiravan Additional Advocate General Assisted by Mr.S.Kadarkarai
For R1 to R3, & R6	: Mr.J.Lawrence
For R7	: Mr.C.Satheesh Government Advocate
R4 & R5	: Died
For R8 to R18	: No appearance

CRP(MD).No.417 of 2013:

For Petitioners	: Mr.Veera.Kathiravan Additional Advocate General Assisted by Mr.S.Kadarkarai

For R1 : No appearance

For R2 to R11 : Mr.J.Lawrence

For R12 :Mr.C.Satheesh
Government Advocate

CRP(MD).No.418 of 2013:

For Petitioners : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.S.Kadarkarai

For R1 to R8 : Mr.J.Lawrence

For R20 : Mr.C.Satheesh
Government Advocate

R9 to R11 : Died

For R12 to R16
& R19 : No appearance

COMMON ORDER

The respondents 2 and 3 in the execution petition who are the beneficiaries in the acquisition proceedings arising out of land acquisition proceedings are the revision petitioners.

Factual Background:

2.The lands belonging to the respondents in the revision petitions were acquired for the purpose of expansion of Government

Horticulture Research Station by way of 4(1) Notification dated 30.07.1986. The Land Acquisition Officer/ Revenue Divisional Officer had fixed certain amount as compensation. Challenging the same, a reference was made under Section 18 of the Land Acquisition Act in LAOP.Nos.22 and 23 of 1992 before the Sub Court, Periyakulam. The learned Subordinate Judge enhanced the compensation. Challenging the same, the Acquisition Officer had filed A.S.Nos.130 to 133 of 1995 before the High Court. The Division Bench of High Court was pleased to dispose of the appeal fixing compensation at Rs.300/- per cent and Rs.500/- for each coconut tree by way of an order dated 03.12.2003.

3.In order to execute the said award, the claimants had filed E.P.Nos.40, 41 and 42 of 2008 and 7 of 2009 before the Subordinate Court, Periyakulam for attachment of movable and immovable properties. After considering the calculation memo filed on either side, the learned Subordinate Judge had passed an order on 19.12.2011 allowing the execution petitions. The said orders were challenged in CRP(MD).No.793 to 796 of 2012 by the beneficiaries of the acquisition proceedings. This Court by an order dated 26.06.2012 arrived at a finding that the amount deposited by the beneficiaries of the acquisition proceedings has not been deducted by the Executing Court at each stage which has led to the confusion. This Court has also referred to the judgment of the Hon'ble Supreme Court reported in ***2006 8 SCC 457 (Gurpreet Singh Vs. Union of India)*** with regard to the calculation of interest. This Court in Paragraph No.8 of the order, had further found that the execution petitions had been allowed simply based upon the calculation memo without giving credit to the amount deposited by the petitioner at each stage.

4.Based on the above said findings, the revision petitions were allowed and the Subordinate Judge, Periyakulam was directed to work out the calculation afresh in the light of the guidelines given by the Hon'ble Supreme Court. Both the parties were directed to file their respective calculation memo before the Court within a period of two weeks.

5.In view of the order of this Court dated 26.06.2012, the beneficiaries of the acquisition proceedings have filed a calculation sheet on 31.08.2012. The Executing Court found that the respondents in the execution proceedings were not able to establish that the calculation sheet furnished by the claimants is erroneous. The Executing Court further found that the claimants have deducted the amount withdrawn by them from the total amount. The beneficiaries have deposited part of the amount on 31.03.1995 and 13.09.2006. Those amounts have been specifically deducted and the balance amount is the subject matter of the execution proceedings.

6.The Execution Court further found that Exhibit P4 is the calculation sheet prepared by the acquisition officer and as per the said document, an amount of Rs.46,44,649/- was outstanding as on 30.09.2004. However, the said amount has not been deposited before the Court. The Execution Court further found that the Government has not filed a proper calculation sheet for the deposit of the compensation amount.

7.Based on the said findings, the Executing Court allowed the execution petition directing the beneficiaries of the acquisition proceedings to deposit the balance amount within a period of 60 days. In case of any failure to deposit the said amount, the Court had directed for attachment of the properties. These orders are under challenge in the present revision petitions.

Submissions of the Counsels:

8.The learned Additional Advocate General appearing for the revision petitioners had contended that the claimants have filed a calculation memo without deducting the amount at each stage of deposit of the amount. The interest has been calculated by the claimants for the total balance amount. He had further contended that the claimants would be entitled to get interest on the deposit amount only from the date of enhancement. The claimants have withdrawn the deposit amount with interest at each and every occasion and therefore, the present application for attachment of the property by calculating compounding interest is not legally sustainable.

9.The learned Additional Advocate General had further contended that the calculation has to be worked out only for the differential amount and it should not be calculated for the entire enhanced amount that was revised by the High Court. He had further contended that the Executing Court ought to have considered the break-up figures in the original award of the acquisition officer, the enhanced award of the Acquisition Tribunal and the award amount fixed by the High Court. Without considering the said break-up figures, the award of the High Court has been taken in total and the interest has been levied without considering the amount that was already deposited. He had further contended that the Executing Court had committed an error in calculating the enhanced amount from 4(1) Notification with interest and solatium instead of calculating the interest and solatium on the differential amount from the original award and the enhanced amount. He had further stated that the Executing Court had solely relied upon the calculation memo filed on the side of the claimants instead of considering the said memo in the light of the judgement of the Hon'ble Supreme Court as directed by the High Court in CRP(MD).Nos. 793 to 796 of 2012.

10.Without considering the calculation memo filed on the side of the State Government in the light of the Hon'ble Supreme Court, the Executing Court has simply brushed aside the calculation memo on the side of the Government and simply accepted the memo of the claimants.

11.The learned Additional Advocate General had further contended that excess amount has been deposited by the State and the same has also been withdrawn by the claimants. Therefore, the order of the Executing Court is not legally sustainable and the same may be set aside. He had further contended that a new calculation has been filed now indicating the date of deposit of the amount and the mode of calculation of interest at every stage of the proceedings. Hence, he prayed for setting aside the order passed by the Executing Court.

12.Per contra, the learned counsel appearing for the respondents/claimants had contended that, following the judgement of the Hon'ble Supreme Court reported in ***2006 8 SCC 457 (Gurpreet Singh Vs. Union of India),*** the claimants have prepared the calculation memo. In fact, the claimants have given due credit to the amount deposited by the Government at every stage of the proceedings. On the other hand, no contra document has been placed by the acquisition authorities to dispute the said calculation memo.

13.The learned counsel for the claimants had further contended that the claimants have claimed interest on the gross compensation and interest on delayed payment of the compensation. Therefore, the contention of the learned Additional Advocate General that the claimants have demanded compounding interest is not legally correct. He had further contended that as per Exhibit A4, the Government had sanctioned Rs.46,44,649/- towards compensation for the acquisition proceedings. However, only a lesser amount was deposited before the Court, that too in LAOP.Nos.14 and 15 of 1992 instead of depositing the same in LAOP.Nos. 22 and 23 of 1992. Therefore, the amount that were credited in LAOP.Nos. 14 and 15 of 1992 cannot be taken into consideration as deposit in

LAOP.Nos. 22 and 23 of 1992. In view of deposit made by the State in unconnected LAOPs, the claimants are not in a position to withdraw their claim amounts.

14.The learned counsel had further contended that the authorities have calculated 12% interest only from the date of award of the Land Acquisition Officer and not from the date of 4(1) Notification. Therefore, there is a huge difference between the amount due and the amount deposited by the authorities. He had further pointed out that the Execution proceedings were initiated in tune with the order passed by the High Court and the Executing Court was satisfied that the award amount as per the High Court has not been deposited by the authorities. The calculation memo that is filed before the High Court is containing wrong particulars and therefore, the same cannot be relied upon.

15.The learned counsel for the claimants had further contended that the interest has been calculated till one particular date in the calculation memo, but the amount had been deposited on a later point of time. Therefore, the entire calculation memo filed by the authorities is erroneous and the same cannot be relied upon. Hence, he prayed for sustaining the orders passed by the Executing Court.

16.I have given anxious consideration to the submissions made on either and perused the material records.

Discussion:

17.There is a dispute between the claimants and the acquisition authorities with regard to the calculation of compensation and interest amount as per the order passed by this Court in A.S.Nos. 130 to 133 of 1995. In the first round of litigation arising out of execution proceedings, this Court by an order dated 26.06.2012 in CRP(MD).Nos.793 to 796 of 2012, has arrived at a categorical finding that the Executing Court has not followed the dictum of the Hon'ble Supreme Court in the judgement reported in ***2006 8 SCC 457 (Gurpreet Singh Vs. Union of India)*** with regard to appropriation of the amount deposited by the State towards different stages of the deposit. This Court had further found that the calculation memo filed by the claimants does not due credit to the amount deposited by the Government at each stage. This Court had directed the Executing Court to strictly follow the judgement of the Hon'ble Supreme Court cited supra.

18.A perusal of the order of the Executing Court reveals that after remand, no fresh calculation memo was filed on the side of the claimants. Exhibits A6 and A7 calculation memo are dated 04.01.2010 which are prior to the order passed in CRP(MD).Nos. 793 to 796 of 2012. On the side of the Government, a new calculation memo has been filed as Exhibit R2 and the claimants have not filed any other fresh calculation memo after remand, especially when the High Court in CRP(MD).Nos.793 to 796 of 2012 has pointed out that in Paragraph No.8 of the order that the original calculation memo of the claimants is erroneous.

19.The claimants have mainly relied upon Exhibit P4- letter of Government order under which a sum of Rs.46,44,649/- has been sanctioned for deposit of compensation amount in LAOP.Nos. 20 and 23 of 1992. According to them, the entire amount that was sanctioned was not deposited before the Court. The Execution Court has mainly relied upon the said Government order and has allowed the execution petition on the ground that the Government has not established the deposit of the said amount before the Executing Court.

20.After remand, the claimants have not filed any fresh calculation memo rectifying the defects that were pointed out by the High Court. The claimants have to first establish their entitlement to the amount sanctioned by the Government by filing a proper calculation memo. In the present civil revision petitions, the claimants have filed a calculation memo. The Government has also filed a fresh calculation memo pointing out the deposit of the compensation amount at every stage of the proceedings. The Executing Court had arrived at a finding that the Government has not filed a proper calculation memo. Therefore, it is clear that the Executing Court has not strictly followed the decision of this Court in CRP(MD).Nos.793 to 796 of 2012 and has allowed the execution petitions by relying upon the calculation memo submitted by the claimants prior to the order of remand.

21.There is a dispute between the claimants and the beneficiaries of the acquisition proceedings with regard to the correct date of deposit of the compensation amount on various dates. This could be verified only by the Executing Court from their record and the same cannot be adjudicated upon by this Court by relying upon the submissions made by either parties without perusing the original records. Therefore, this Court is of the opinion that the orders impugned in the revision petitions are liable to be set aside and the matters shall be remanded back to the Executing Court.

22.The Executing Court shall direct both the parties to submit their fresh calculation memo within a period of four weeks from the date of receipt of a copy of this order. The Executing Court shall verify its records with regard to the correct date of deposit of the amounts on various dates made by the beneficiaries. Thereafter, the calculation memos shall be scrutinized in the light of the judgement of the Hon'ble Supreme Court reported in ***2006 8 SCC 457 (Gurpreet Singh Vs. Union of India)*** and orders may be passed accordingly.

23.In view of the above said deliberations, the orders of the Executing Court are set aside and all the Civil Revision Petitions stand allowed and remitted back to the file of the Subordinate Court, Periyakulam for fresh consideration in the light of the observations made above. No costs.

11.08.2023.

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1.The Subordinate Judge
Periyakulam

2.The Tmil Nadu Agricultural University
Coimbatore through its Registrar

3.Horticultural College and Research Institute
Periyakulam through its Dean

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR, J

msa

Pre-delivery Common Order made in

C.R.P.(MD).Nos.415 to 418 of 2013

11.08.2023