



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

Reserved on : 08.03.2024

Pronounced on : 12.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.1087 and 1088 of 2018

and

C.M.P.(MD)No.4724 of 2018

Executive Engineer and Administrative
Officer,
Tamil Nadu Housing Board,
Tirunelveli.

...Petitioner in both
the petitions

Vs.

1. Gnanambal
2. Venkatachalam
3. Special Tahsildar
Tamil Nadu Housing Board
Tirunelveli.

4. N.Subbaiah

...Respondents in
both the petitions

Prayer in C.R.P.(MD)No.1087 of 2018 : This Civil Revision Petition
filed under Article 227 of the Constitution of India, to allow this Civil



C.R.P.(MD)Nos.1087 and 1088 of 2018

Revision Petition and to set aside the fair and decreetal order dated 21.12.2017 passed in E.A.No.323 of 2017 in E.P.No.143 of 2005 on the file of the Principal Sub Court, Tirunelveli and consequently direct the respondents 1 and 2 to pay the excess amount already received for a sum of Rs.46,268.74 from 18.08.2016 with 12% interest per annum.

Prayer in C.R.P.(MD)No.1088 of 2018 : This Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition and to set aside the fair and decreetal order dated 21.12.2017 passed in E.P.No.143 of 2005 on the file of the Principal Sub Court, Tirunelveli.

(in both the petitions)

For Petitioner	: Mr.A.Kannan
For R1 & R2	: No appearance
For R3	: Mr.J.Ashok, Additional Government Pleader
For R4	: Mr.S.Kumar

COMMON ORDER

The revision in C.R.P.(MD)No.1087 of 2018 is directed against the order passed in E.A.No.323 of 2017 in E.P.No.143 of 2003 in L.A.O.P.No. 74 of 1993 dated 21.12.2017 on the file of the Principal Subordinate Court, Tirunelveli, dismissing the application filed under Section 47 of the Code of Civil Procedure.



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

2. The revision in C.R.P.(MD)No.1088 of 2018 is directed against the order passed in E.P.No.143 of 2003 in L.A.O.P.No.74 of 1993 dated 21.12.2017 on the file of the Principal Subordinate Court, Tirunelveli, confirming the sale and closing the execution petition.

3. It is not in dispute that the lands at Kulavanigarapuram village of Palayamkottai Taluk, Tirunelveli District, to an extent of 79.30 acres was acquired for Tamil Nadu Housing Board housing scheme and that the Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Tirunelveli, has passed an award in Award No.2 of 1989 dated 15.03.1989. Aggrieved by the quantum of compensation, the land owners have approached the Land Acquisition Tribunal and One Subramanian, who is the husband of the first respondent and father of the second respondent, has filed a petition in L.A.O.P.No.74 of 1993 and the learned Subordinate Judge, after enquiry, has enhanced the compensation, vide order dated 29.09.1995. Aggrieved by the order of enhancing compensation, an appeal came to be filed in A.S.No.695 of 1996 before this Court and the same was dismissed on 10.12.2002. Meanwhile, the land owners/deed holders have filed an execution petition in E.P.No.43 of 1996 and after depositing of some amount and since the appeal was pending, the said execution



C.R.P.(MD)Nos.1087 and 1088 of 2018

petition was ordered to be closed on 07.02.1997. The second execution petition in E.P.No.113 of 1997 was ordered to be dismissed as not pressed on 08.08.1998. After the dismissal of the appeal before the High Court, the respondents 1 and 2 have filed the present execution petition in E.P.No. 143 of 2003 for recovery of Rs.60,379.18/-, which includes the balance amount due of Rs.31,366/- claiming attachment of movables of the revision petitioner. It is evident from the records that the movable properties were ordered to be attached vide order dated 13.11.2003 and when the movable attachment warrant was pending, the revision petitioner has preferred revisions before this Court in C.R.P.(NPD)(MD)Nos.368 to 370 of 2004, challenging the orders passed in the execution petitions and obtained interim stay, that thereafter, the revisions were ordered to be dismissed for non-prosecution on 08.07.2015, that movable properties were attached, that when the sale proceedings were pending, sale warrant was returned as the movable properties were not in possession of the revision petitioner, that thereafter, the respondents 1 and 2 have filed an amendment petition to include immovable properties belonging to the revision petitioner and the same was ordered to be allowed and that thereafter the immovable properties were ordered to be attached vide order



C.R.P.(MD)Nos.1087 and 1088 of 2018

dated 13.06.2017. It is further evident from the records that the executing Court, after coming to know from the amin report that the immovable properties attached were having value of Rs.1,21,50,000/- and taking note of the amount claimed in the execution petition, has passed an order to sell one plot i.e., Plot No.1, which is sufficient to satisfy the amount claimed in the execution petition, that subsequently in the Court auction held on 06.09.2017, Plot No.1 was sold to one Subbiah-fourth respondent herein, that when the case was pending for confirmation of sale, the revision petitioner has filed the above application in E.A.No.323 of 2017 under Section 47 C.P.C. and that when the said application was posted for hearing its maintainability, since there was no representation for the revision petitioner and considering the submission made by the learned counsel on the other side, has passed the impugned order dated 21.12.2017 dismissing the application filed under Section 47 C.P.C. as not maintainable. Aggrieved by the order of dismissal, the above revision in C.R.P.(MD)No.1087 of 2018 came to be filed. The executing Court, after dismissing the application filed under Section 47 C.P.C., has passed an order confirming the sale and for closure of the execution petition consequently on 21.12.2017 itself. Against the said order passed in the



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

execution petition, the above revision in C.R.P.(MD)No.1088 of 2018 came to be filed.

4. The main contention of the revision petitioner is that 30% solatium under Section 23(2) of Land Acquisition Act has to be awarded only for the market value, that the Tribunal has wrongly awarded 30% solatium and 12% additional value also, that the above order, which was passed without jurisdiction, is illegal and that therefore, the revision petitioner has invoked Section 47 C.P.C. questioning the validity and the executability of the decree passed in L.A.O.P.

5. No doubt, the Land Acquisition Tribunal in L.A.O.P.No.74 of 1993 passed an award dated 29.09.1995 ordering for 12% additional value for the market value and 30% solatium for market value and 12% additional value.

6. As already pointed out, the revision petitioner has preferred the appeal challenging the award passed by the Land Acquisition Tribunal in A.S.No.695 of 1996 and the said appeal was dismissed by the High Court



C.R.P.(MD)Nos.1087 and 1088 of 2018

confirming the order of the Tribunal. Moreover, the executing Court accepting the case of the respondents 1 and 2 has attached immovable properties of the revision petitioner. It is pertinent to note that the respondents 1 and 2 initially have claimed attachment and sale of movable properties belonging to the revision petitioner, but after attachment, when sale proceedings were pending, the executing Court was informed that movable properties were not available in the custody of the revision petitioner and thereafter only, the respondents 1 and 2 have amended the main execution petition and included the immovable properties. No doubt, the executing Court has attached 81 Plots i.e., measuring 243 cents of land, allegedly for realization of Rs.60,379.18/-. Considering the quantum of the amount claimed in the execution petition, the attachment of the entire immovable properties measuring 243 cents is nothing, but excessive attachment. But as rightly pointed out by the learned counsel appearing for the fourth respondent, the executing Court, after coming to know about the excessive attachment, has passed an order for sale of one Plot of land i.e., Plot No.1 and that property alone was sold in Court auction.

7. The learned counsel appearing for the revision petitioner would contend that attachment of 243 cents is illegal and that is why they have



C.R.P.(MD)Nos.1087 and 1088 of 2018

filed the above application under Section 47 C.P.C. seeking dismissal of the execution petition. Just because there was some excessive attachment, that by itself is not a ground to dismiss the execution petition, more particularly, the executing Court has rectified its mistake by ordering sale of one Plot out of 81 Plots.

8. As rightly contended by the learned counsel appearing for the fourth respondent, the pleas now raised in the application filed under Section 47 C.P.C. ought to have raised before the appellate Court or atleast before the revisional Court, when the award and the attachment and sale of property belonging to the revision petitioner were challenged before the High Court. As rightly contended by the learned counsel appearing for the fourth respondent, even assuming for arguments sake that the objections raised by the revision petitioner has merits, that by itself cannot make the decree of the Tribunal, which was confirmed by the High Court, is without jurisdiction and is illegal.

9. The learned counsel appearing for the fourth respondent has relied on the recent judgment of the Hon'ble Supreme Court in the case of



C.R.P.(MD)Nos.1087 and 1088 of 2018

Pradeep Mehra Vs. Harijivan J. Jethwa (since deceased thr. LRs.) and

others in Civil Appeal No.6375 of 2023 dated 30.10.2023, wherein, the

Hon'ble Apex Court has dealt with scope of Section 47 C.P.C. and the principle of constructive *res judicata* and the relevant passages are extracted hereunder:-

“5. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the “execution of the decree”. The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court’s order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited.



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

6. *The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In Rahul S. Shah v. Jinendra Kumar Gandhi and Others (2021) 6 SCC 418, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:*

“23. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”

The above judgment is an important judgment in respect of Section 47 as well as Order XXI, CPC as the three Judge Bench decision of this Court not only condemned the abuse of process done in the garb of exercise of powers under Section 47 read with Order XXI, CPC, but also gave certain directions to be followed by all Civil Courts in their exercise of powers in the execution of a decree. It further directed all the High Courts to update and amend their Rules relating to



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

the execution of decrees so that the decrees are executed in a timely manner. As far as Section 47 is concerned, this Court had stated as under:

“24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of



WEB COPY



C.R.P.(MD)Nos.1087 and 1088 of 2018

fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

10. Regarding the plea of *res judicata*, the Hon'ble Apex Court has observed,

“7. In support of the submission the decree holder relied upon a decision of this court given in Barkat Ali & Anr. vs. Badrinarain (D) by Lrs. 2008 (4) SCC 615, where this court reiterated the settled position of law that the principles of res judicata are not only applicable in respect of separate proceedings but the general principles of res judicata are also applicable at the subsequent stage of the same proceedings and therefore the same court will be precluded to go into that question which has already been decided, or deemed to have been decided by it in the earlier stage. In other words, it will be barred by the principle of res judicata, or at least by the principle of constructive res judicata. The logic here is that an execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end and the matter has moved to the next stage, the judgment debtors cannot raise the objection subsequently, and revert back to an earlier stage of the proceeding. This is exactly one of the reasons given by the executing court in its order dated 28.09.2017 which we have already referred above. Merely, because it has not specifically referred to the principle of res judicata will not make any difference.”



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

11. As rightly contended by the learned counsel appearing for the fourth respondent, the points now canvassed by the revision petitioner cannot be limited to the execution of decree and as such, the executing Court cannot go into the validity or otherwise of a decree, but at the same time, the executing Court under Section 47 C.P.C. can examine the executability of the decree if it is found that the same is without jurisdiction or *void ab initio* and nullity.

12. In the case on hand, the points canvassed by the revision petitioner, even assuming for arguments sake, to be true and correct, by no stretch of imagination, can be taken that the decree is null and void or nullity. Since this Court has already dismissed the appeal confirming the award passed by the Land Acquisition Tribunal and the decision has attained finality, the revision petitioner, without raising the present objections in the earlier proceedings, cannot be allowed to raise at this stage, as per the dictum of the Hon'ble Supreme Court above referred, the same is barred by principle of constructive *res judicata*.



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

13. It is evident from the records that after filing the application under Section 47 C.P.C. and when the matter was pending for deciding the maintainability of the application, the revision petitioner has not turned up to prosecute the application and since there was no representation for them, the executing Court, taking note of the submission made by the other side, has rightly dismissed the application as not maintainable. Consequently, the executing Court, by confirming the Court auction sale, has ordered to close the execution petition. Considering the above, the impugned orders passed by the executing Court cannot be found fault with. Consequently, this Court concludes that the revisions are devoid of merit and the same are liable to be dismissed.

14. The learned counsel appearing for the revision petitioner would contend that the attachment of remaining 80 Plots is still in force and that may be ordered to be raised. Since one Plot was sold and the sale was confirmed, the revision petitioner is at liberty to approach the executing Court for raising the attachment in respect of the remaining properties and that if such a plea is raised, the executing Court is directed to look into the same and pass necessary orders immediately.



C.R.P.(MD)Nos.1087 and 1088 of 2018

WEB COPY

15. In the result, these Civil Revision Petitions are dismissed. The revision petitioner is at liberty to move the executing Court for raising the attachment in respect of the remaining properties and if such a plea is raised, the executing Court is directed to look into the same and pass necessary orders at an earlier date. Consequently, connected Miscellaneous Petition is closed. No costs.

12.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal Subordinate Judge,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)Nos.1087 and 1088 of 2018



WEB COPY



C.R.P.(MD)Nos.1087 and 1088 of 2018

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)Nos.1087 and 1088 of 2018
and
C.M.P.(MD)No.4724 of 2018

Dated : 12.04.2024