

C. Jayaprasad Vs. Special Tahsildar, Land Acquisition Adi Dravida Welfare

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Court : Chennai

Decided On : Apr-23-1997

Reported in : 1997(2)CTC607

Judge : P. Sathasivam, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 2

Appeal No. : Civil Revision Petition No. 545 of 1997

Appellant : C. Jayaprasad

Respondent : Special Tahsildar, Land Acquisition Adi Dravida Welfare

Advocate for Def. : K. Elango, Govt. Adv.

Advocate for Pet/Ap. : Prabha Sridevan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

P. Sathasivam, J.

1. By consent of both parties, the main revision itself is taken up for final disposal, Aggrieved against the order dated 18.1.1997 in un-numbered E.A. of 1991 in E.P.No. 77 of 1996 in L.A.O.P.No. 87 of 1990 on the file of Subordinate Judge,

Dindigul, the petitioner/5th claimant has filed the present revision before this Court.

2. The petitioner herein who is the fifth claimant has filed an application under Rule 163, 165 of the Civil Rules of Practice praying to issue a cheque for Rs. 3,16,174 in favour of Mr. R. Alexander, Advocate for the petitioner (5th Claimant) being the compensation due to him for an extent of 0.72 cents. The court below by order dated 18.1.1997, has passed the following order:-

'The petition was called in open court on 18.1.1997, the Government Pleader was absent and petitioner counsel was also absent. On a perusal of the records and the letter received from the Special Tahsildar, Nilakkottai, it is seen that appeal is said to have been preferred. Hence this petition is rejected.'

3. I have heard Mrs. Prabha Sridevan, learned counsel for the petitioner and Mr. K. Elango, learned Government Advocate for the respondent.

4. Since the respondent Special Tahsildar has not paid the amount as awarded by the sub court the petitioner has filed an application to issue a cheque as stated therein in favour of his Advocate. A perusal of the order of the learned Subordinate judge shows that both the counsel for petitioner as well as the Government Pleader were absent. However, on the basis of a letter received from the Special Tahsildar, Nilakottai stating that they have preferred appeal, the learned Subordinate Judge rejected the petition. The way in which the learned Subordinate Judge has disposed off the said petition shows that he has not even applied his mind. When a decree-holder after getting decree (in this case award) while approaching this Court to realize the said amount as per the award unless the said award is stayed by the appellate court, the court below is expected to issue necessary and suitable orders to recover the said amount as per the award. It is not open to the court to reject the petition merely on the basis of a letter said to have been sent by the Special Tahsildar that they have preferred appeal. As a matter of fact, the respondent has not filed a copy of any stay order, nor memo containing the date of filing of the appeal number or atleast appeal S.R.No. and the present stage of the appeal. Without considering those aspects, the rejection of the execution petition only on the basis of a letter from the Special Tahsildar stating that they have preferred appeal cannot be sustained.

5. Under these circumstances, the order of the court below dated 18.1.1997 passed in unnumbered E.A. of 1997 in E.P.No. 77 of 1996 in L.A.O.P.No. 87 of 1990 on the file of Subordinate Judge, Dindigul is set aside. I hereby direct the learned Subordinate judge, Dindigul to restore the above application and pass appropriate suitable orders in the application filed by the petitioner. I make it clear that if there is no acceptable evidence with regard to stay of execution of the award, there is no impediment in granting the relief claimed by the petitioner. With these directions, the Civil Revision Petition is allowed with costs.

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