

(2008) 11 AP CK 0015

Andhra Pradesh High Court

Case No: C.R.P. No. 4652 of 2008

Land Acquisition Officer (SDC)

APPELLANT

Vs

Y. Vijaya Kumar and Others

RESPONDENT

Date of Decision: Nov. 12, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 46B, Order 38 Rule 5, 151
- Land Acquisition Act, 1894 - Section 18

Citation: (2010) 1 ALT 371

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: G.P. for Arbitration, for the Appellant; Ch. Janardhan Reddy, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

These four revision petitions are filed by the Land Acquisition Officer (Special Deputy Collector), Somasila Project, Rajampet. He feels aggrieved by the individual orders, passed by the Court of Senior Civil Judge, Rajampet, in applications filed u/s 151 of the C.P.C. in four different suits. The respondents 1 and 2 are the plaintiff and defendant in the respective suits, and except that the persons and amounts are different, the nature of pleadings and steps involved are identical. Reference to one of them would be, to others also.

2. The 1st respondent filed the suit against the 2nd respondent for recovery of certain amount. Along with the suit, he filed an application under Order 38 Rule 5 C.P.C., with a prayer to cause attachment before judgment, of amount, which is said to have been awarded in favour of the 1st respondent, by the petitioner herein, in an award under the Land Acquisition Act (for short "the Act"). An order was passed, directing attachment before judgment.

3. Within a short time, the respondents 1 and 2 agreed for reference of the matter to the Lok Adalat. An award was passed on 02-08-2008, and a consent decree for the suit amount ensued. The Lok Adalat was also directed refund of the Court Fee to the 1st respondent. After the award from the Lok Adalat emerged, the 1st respondent filed an application before the Court of Senior Civil Judge, Rajampet, to sent for the decretal amount, from the petitioner.

4. The physical presence of the petitioner was secured by the Court. The petitioner filed an affidavit to the effect that, no amount as such was awarded to the 1st respondent, in the pending land acquisition O.P. It is also stated that the land acquisition O.P. itself is pending before the Lok Adalat, and unless and until any amount is awarded, it would not be possible to deposit any amount before the Court. Not being satisfied with the explanation, the Trial Court directed arrest of the petitioner. Hence these revisions.

5. Learned Government Pleader for Appeals submits that the trial Court has committed blatant illegality at various stages, and the order under revision is without jurisdiction, apart from being the result of mala fide exercise of power. She contends that, all the suits, that gave rise t the revisions, are collusive and mala fide in nature, and were designed only to extract money through illegal means. She submits that when the petitioner was not a defendant in the suit, the question of filing an application under Order 38 Rule 5 C.P.C., against him, does not arise. It is also her case that if the consent decree passed by the Lok Adalat was not complied with by the 2nd respondent, the only course open to the 1st respondent the application filed subsequent to the decree, which, in the form of execution petition, ought not to have been entertained, u/s 151 C.P.C. It is also urged that even where an E.P. is filed, the question of directing arrest of a person, who is not a party to the decree, is unheard of.

6. Sri Ch. Janardhan Reddy, learned Counsel for the 1st respondent, submits that an order of attachment, before judgment, became final, and in that view of the matter, the petitioner was under obligation to deposit the amount, covered by such order, to the credit of the decree. Learned Counsel contends that the explanation offered by the petitioner was not found to be satisfactory by the trial Court, and in exercise of residuary powers, u/s 151 C.P.C., the order under revisions was passed, to ensure compliance with the decree.

7. The suit against the 2nd respondent is the one, for recovery of money-simpliciter. The plaint is, as brief as it could be. If the former paragraphs of description of parties, cause of action, and prayer are omitted, the plaint reads as under:

(a) That the defendant borrowed an amount of Rs. 1,20,000/- from the plaintiff on 05-07-2006 for his expenses and executed the promissory note on the same day and time in favour of the plaintiff at the residence of the plaintiff agreeing to repay the same at interest at 24% p.a., to him or to his order on demand and also agreed to

repay the same within short period. The pronote dated 05-07-2006 for Rs. 1,20,000/- is herewith filed. Same within short period. The pronote dated: 05-07-2006 for Rs. 1,20,000/- is herewith filed.

(b) That the plaintiff personally met the defendant many times and demanded the defendant to repay the said pronote amount with interest, but the defendant failed to pay the same. Also the plaintiff made mediations through the elders, but in vain.

(c) Hence the plaintiff filed the suit for recovery of the suit pronote amount with interest.

8. The 1st respondent filed an application under Order 38 Rule 5 C.P.C., with the following prayer:

For the reasons stated in the accompanying affidavit, it is therefore prayed that the Honourable Court may be pleased to issue orders for attachment before judgment of the petition schedule property which is in the hands of the 2nd respondent, i.e., Special Deputy Collector, Land Acquisition, Somasila Project, Rajampet in the interest of justice.

Schedule: The petitioner schedule property is in the hands of R-2 i.e., The Special Deputy Collector, Land Acquisition, Somasila Project, Rajampet as details given below:

Details:

(a) L.A.O.P. No. 92 of 2008 on the file of Honourable District Principal Judge, Kadapa (1st respondent is the claimant No: in this L.A.O.P.)

(b) S.P.R. No. 153-A

(c) Amount Rs. 2,58,302/-

9. The contents of the affidavit, filed in support of the I.A., are more elaborate, than those, of the plaint. The petitioner was made the basis for seeking the relief of attachment before judgment was mentioned in the affidavit, as under:

That the Government acquired the structures of all the villagers of the 1st respondents village including the 1st respondents structure under Somasila Project and the Government paid the compensation through R-2 to the villagers including the 1st respondent. The villagers including this 1st respondent filed claim petition u/s 18 of the Land Acquisition Act before the Honourable District Principal Judge, Kadapa. The 2nd respondent i.e. the Special Deputy Collector, Land Acquisition, Somasila Project, Rajampet is going to pay the claim amount to the villagers including this 1st respondent as details given in the schedule.

That except the petition schedule property, the 1st respondent has no other properties in his favour. If the 1st respondent succeeds in receiving the petition schedule property from the R-2 i.e., Special Deputy Collector, Somasila Project,

Rajampet, I have to suffer irreparable loss and it will become difficult to me to recover the decretal amount, if any passed by this Honourable Court in my favour.

10. It is rather surprising that the trial Court had entertained such an application, ignoring the fact that the person, against whom attachment before judgment was prayed for, is not a defendant to the suit, and that the so-called attachment was in relation to an O.P., pending before the Principal District Judge, Kadapa. Straightaway an order of attachment before judgment was passed on 02-04-2008. It is represented that in addition to the four suits, which are the subject-matter of these revisions, vast number of which are the subject-matter of these revisions, vast number of similar suits were also filed. It is surprising to note that the parties to the suits were also filed. It is surprising to note that the parties to the suits are so friendly, that all of them have amicably settled their disputes through the medium of the Lok Adalat, in the month of August 2008, and consent decrees were passed for the respective suit amounts, on 02-08-2008. The Lok Adalat also directed refund of the Court Fee paid on the complaints.

11. Once the consent decrees were passed, the 1st respondent filed I.A., u/s 151 C.P.C., to send for the amounts, that were attached under Order 38 Rule 5 C.P.C. The trial Court generously acceded to the request of the 1st respondent and passed an order on 27th itself. The matter was listed for hearing on 02-09-2008. The 1st respondent filed another I.A., under Order 21 Rule 46-B read with Section 151 C.P.C., to issue show cause notice to the petitioner herein, by describing him as garnishee. The prayer in this application reads as under:

For the reasons stated in the accompanying affidavit, it is therefore prayed that the Honourable Court may be pleased to issue show cause notice to the Garnishee i.e. Special Deputy Collector, Land Acquisition, Somasila Project, Rajampet for violating the orders of the Honourable Court and send him to the Civil Prison in the interest of justice.

12. The learned Senior Civil Judge, promptly acceded to the request, and issued a show cause notice, which is hereunder reproduced:

Show Cause Notice

Senior Civil Judge Court,
Rajampet, dt. 3-10-08.

From

Sri B. Babu Rao, B.Com., BL,
Senior Civil Judge,
Rajampet.

To

The Special Deputy Collector (LA),
Somasila Project-Unit-IV,
Rajampet.

Sir,

Sub: Courts-Senior Civil Judge Court, Rajampet - Non-sending of attached amount of Rs. 1,70,000/--1. A. No. 1642 of 08 in O.S. No. 43 of 08 which was attached in I.A. No. 607 of 08 in O.S. No. 43 of 08 - Called for explanation-Requested-Reg.

Ref: (1) Prohibitory order of this Court in I.A. No. 607 of 08 in O.S. No. 43 of 08, served on you on 9-4-2008.

(2) Send for order of this Court in I.A. No. 1642 of 08 in O.S. No. 43 of 08.

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Whereas the counsel for the petitioner/plaintiff filed a petition in I.A. No. 1711 of 08 in O.S. No. 43 of 08 requesting to this Court to issue show cause notice to the garnishee i.e., the special Deputy Collector, Somasila Project, Unit-IV, Rajampet, for violation of court order for sending the attached amount which was attached in I.A. No. 607 of 08 in O.S. No. 43 of 08 in the name of the Senior Civil Judge, Rajampet, relating to respondent No. 1.

Hence, you are hereby directed to show cause as to why you have failed to send the already attached amount of Rs. 1,70,000/- and as to why you should not be treated as respondent/J.Dr. for violating of court order, and further you are directed to appear before this Court on 13-10-08 and submit your explanation, to which date the case stands posted to.

13. The petitioner was made to appear before the trial Court, as a sequel to the show cause notice. He filed an affidavit before the trial Court, stating inter alia that the O.P., mentioned in the garnishee award, is still pending and no amount is awarded to the claimant therein. The trial Court was not satisfied with this explanation, and had proceeded to pass the following order:

...The garnishee is appeared before this Court on serving show cause notice against the garnishee. The amount was attached in I.A. No. 613 of 08 and the same was made absolute. Subsequently garnishee failed to send amount already attached through show cause notice is served against him with a direction to appear before this Court on 13-10-2008. Perused the explanation submitted by the garnishee, through A.G.P. The explanation submitted by the garnishee is not satisfactory. There are no good reasons to accept the explanation submitted by the garnishee. As the garnishee failed to send the attached amount covered by the decree and as directed by this Court, the garnishee should be treated as J.Dr. In view of the facts and circumstances of the case and in view of the attached amount is not send to the court by the garnishee this Court has no alternative except to order arrest of the

garnishee. In view of the facts and circumstances of the case, I am of the view that if warrant of arrest is issued, it shall meet the ends of justice.

Therefore, issue warrant of arrest against the garnishee by 30-12-2008.

14. A perusal of the above facts would shock the conscience of anyone, who is acquainted with the proceedings before a Civil Court. The sole object of filing of the suit was somehow to get the amount from the petitioner, i.e. from the funds of the Government. The fundamental principle, that an application under Order 38 Rule 5 C.P.C., can be filed only against a defendant, that too, when it is apprehended that he is likely to remove his properties from the jurisdiction of the trial Court; was ignored. With impunity, the attachment before judgment was sought, vis-a-vis a person, who is not a party to the suit. The office passed it, and the learned Judge ordered it, straightaway.

15. Further, the amount that is sought to be attached was the subject-matter of an O.P. pending in the Court of Principal District Judge, Kadapa. If the amount is under the control of the District Court, it is not known, as to how the order was passed against the Land Acquisition Officer. Once this major step was accomplished, one of the popular mechanisms prevailing now, viz., the Lok Adalat, became handy for them, and an award, as prayed for, was passed with the consent of the parties. In their anxiety to exhibit their success to the people, the persons, who conducted the Lok Adalat, did not hesitate to think, as to why a suit came to be filed at all, if the plaintiff and defendant were so friendly. It is not as if the change of mind came after years of pendency of the suit. It was filed in March, and settled in August. Further, the magnanimity and brotherhood dawned on the parties to the various suits, on the same day. Here again the operators of the Lok Adalat appear to have been happy to dispose of fairly large number of cases, than being aware, as to whether they are indirectly becoming parties to the fraud, that was brooding already.

16. After obtaining the decree from the Lok Adalat, the 1st respondent has come back to the original forum. In the normal course, the decree, whether it is the one, passed with consent of the parties, or on contest, can be executed only by filing a petition under the relevant provisions of C.P.C. The steps for sending for amount, or passing of an order against a garnishee are ancillary to an execution petition. Without even filing on E.P., the 1st respondent filed an application u/s 151 C.P.C., to send for the amount. The trial Court ordered the same without verifying as to the maintainability of such an application. This was followed by an application under Order 21 Rule 46-B read with Section 151 C.P.C., with a prayer to issue show cause notice. One hardly comes across prayers of that nature. The learned trial Judge, was accommodative, even in this regard.

17. The C.P.C., is so exhaustive, that it not only contains the provisions, dealing with all contingencies, but also has prescribed large number of forms to be used, while issuing the notices, or orders of different categories, spread over Appendixes A to H.

Appendix-E exclusively deals with the forms, in relation to execution of decrees. Inasmuch as the application filed by the 1st respondent did not fit into any specific provision, there was no corresponding form, in which the notice or order could be issued. Therefore, he has chosen to address a personal letter, which was extracted in the preceding paragraphs. The petitioner promptly responded to the same and appeared. The explanation was found not satisfactory, and the learned Judge has directed the issuance of arrest warrant.

18. Normally, this Court would be slow to comment on the method or manner of discharge of duties, by an officer, in the course of deciding a case. Even where it is found that the order passed by a Subordinate Court is not correct, either on facts or in law, necessary orders, together with the reasons, are passed in the appeal, or revision, arising out of such orders. The freedom of a Judge of a Subordinate Court, to decide a matter, according to his understanding of law and facts, is almost conceded. The very creation of facility of revisions, appeals and second appeals underlines the fact that there is a possibility to take a different view on the same facts. Therefore, the mere fact that the judgment rendered by a Subordinate Court is reversed; does not constitute an occasion to find fault with the incumbent. Even when serious deviation is noticed, on the part of the Presiding Officer, in the course of adjudication, observations, only to the extent necessary are made, with utmost restraint, lest, the morale of the officer is eroded.

19. The facts narrated in this case virtually present a test for the restraint of a Court of record. It is not uncommon that in the pressure of work, occasional lapses take place, in the course of adjudication. Such lapses can be in the form of failure to verify the nature of proceedings, or an accidental slip, in passing an otherwise untenable order. Where, however, deliberate deviations are resorted to, through out the length of proceedings, according to a scheme, actively or tacitly helping the parties or their counsel to commit fraud, this Court cannot remain oblivious. Indifference to such nefarious activities would only encourage recurrence of instances of similar nature, and bring disrepute to the institution as such.

20. Hardly there exists any doubt that from the inception of the suit, till the passing of the order under revision, there was a well-planned scheme, to knock away the amount from the State exchequer. The filing of the suit was only a pretext, to obtain an order of attachment before judgment. It cannot be said that entertaining an application by the Court under Order 38 Rule 5 C.P.C. was an innocent step, or accidental slip. When the amount, sought to be attached, was in relation to the proceedings before the superior court, extraordinary precaution was required to be taken. The order was passed for the mere asking of it. The institution of Lok Adalat was chosen only to perpetuate the fraud. If the 2nd respondent was willing to pay the decretal amount, nothing prevented him. Conversely, if the 1st respondent did not have any problem in the offer made by the 2nd respondent, he ought to have simply got the suit dismissed, as not pressed. The object of approaching the Lok

Adalat was only to get the refund of Court fee. The respondents have taken advantage of the excessive anxiety shown by the various agencies, to encourage disposal through Lok Adalat.

21. Ignoring for a while, that the Award through Lok Adalat was obtained by playing fraud; such a decree could have been executed only through procedure known to law. The very fact, that the 1st respondent did not even make any demand against the 2nd respondent for payment of the decretal amount, shows that both of them were in collusion, to proceed against the third party, viz., the petitioner. The same Presiding Officer has entertained applications, one after the other, in the absence of any execution petition, and grossly misused his judicial power, to threaten and coerce the petitioner, to cough the funds of the State. He forgot the limits of his powers, and felt free to go any extent, to help the respondents, in putting pressure upon the petitioner. The efforts reached their pinnacle, when the impugned order was passed through which, the petitioner was sought to be arrested. Further, all this did not take place in a stray case. A batch of four cases is before this Court, and it is represented that fairly large number of cases are there.

22. Despite the exercise to the maximum restraint, the inevitable conclusion is that the conduct of the Presiding Officer, who passed the order under revision, is despicable and outrageous. The institution of a Civil Court cannot be permitted to be used, as a device to perpetuate fraud. Instead of preventing such attempts, the learned Judge had extended his helping hand at various stages. His conduct deserves to be examined by the concerned agency. The Lok Adalats are also required to be cautious and careful, lest they become the devices to perpetuate fraud on the system, if not on innocent persons. Since the system was misused, the 1st respondent in each case, cannot be extended the benefit of refund of the Court Fee. If the same was refunded, it shall be recovered.

23. For the foregoing reasons, the C.R.Ps are allowed, and the orders under revisions are set aside. That part of the Award of the Lok Adalat, Kadapa, passed in O.S. Nos. 43, 46, 95 and 69 of 2008, which directed refund of the Court Fee, in each case, is set aside, and if refunded, the Court fee shall be recovered. A sum of Rs. 2,000/-, each, is imposed as costs against the 1st respondent, in each case, to be deposited with the Juvenile Home, functioning in the District, within four weeks from the date of receipt of a copy of this order.

24. There shall be no order as to costs.