

(2002) 04 AP CK 0121

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34590 of 1998 and CRP No's. 2191 of 1997

Competant Authority, Under the A.P. Slum Improvement
(Acquisition of Land) Act and Others

APPELLANT

Vs

IVth Additional Junior Civil Judge, Munsiff Court and Others

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 — Section 3(2)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37, Order 21 Rule 40, 51
Constitution of India, 1950 — Article 226

Citation : (2002) 5 ALD 272

Hon'ble Judges : R. Ramanujam, J

Bench : Single Bench

Advocate : T.V. Venkata Ramana, Government Pleader for Municipal
Administration and C. Kodanda Ram, for the Appellant;

Final Decision : Allowed

Judgement

R. Ramanujam, J.—These writ petitions and the civil revision petitions are classic examples of law's delays and decree holders woes.

Since all the writ petitions and civil revision petitions are filed against a common order of the IV Additional Junior Civil Judge, Visakhapatnam, in EP No.230 of 1998 and batch, they are being disposed of by this common order.

2. The facts, which are common to all the writ petitions and civil revision petitions, may now briefly be stated:

3. The unofficial respondents in all the writ petitions and the civil revision petitions, hereinafter referred to as "the land owners"" for the sake of brevity, are the owners of a piece of land, called Kanakala Dibba, admeasuring about 47,642 Sq. feet situated in J.S.No. 1451 of Allipuram Ward, Visakhapatnam Municipality, hereinafter referred to as "the Property in dispute". That land was leased out on monthly basis to the petitioners in the civil revision petitioners and

some others, hereinafter referred to as "the tenants".

5. The tenants constructed huts/small dwelling units and were residing there. On 21-6-1978 and on some other dates about 120 suits - O.S.No. 696 of 1978 and batch -were filed before the IV Additional District Munsif, Visakhapatnam, (subsequently renamed as IV Additional Junior Civil Judge) by the land owners against the tenants for declaration of their title to the property in dispute and for a consequential direction to deliver the suit schedule houses to them after evicting the concerned defendant-tenants and also for recovery of the rents.

6. On 19-7-1978 the then District Revenue Officer (Joint Collector), Visakhapatnam, who was the competent authority u/s 3 of the Slum Improvement (Land Acquisition) Act, 1956 (hereinafter referred to as "the Act") notified the "property in dispute" as slum area and called for objections from the land owners and other interested persons. The said notification was published in the A.P. Gazette on 19-10-1978.

7. Aggrieved by the aforesaid notification, the land owners filed Writ Petition No. 9919 of 1981 contending, inter alia, that the objections filed by them in June, 1980 against the said notification were not considered by the Joint Collector and, therefore, the Joint Collector should be restrained from proceeding further under the provisions of the Act in respect of the "property in dispute". That writ petition was disposed of on 8-12-1987¹ directing the Joint Collector to hear the landowners, consider the objections filed by them in June, 1980 and February, 1981 and then pass appropriate orders.

8. In the meanwhile, all the suits filed by the land owners against the tenants were decreed by a common judgment on 31-12-1985 declaring the land owners' title to the property in dispute and holding that the tenants are liable to pay the rents to the respective land owners as damages claimed in the suits and the land owners are also entitled for subsequent damages, which have to be ascertained on separate petitions to be filed by them. Aggrieved by the said Judgment and Decrees, some of the tenants filed Appeals - A.S.No. 51 of 1986 and Batch - before the Court of the I Additional District Judge, Visakhapatnam. All those appeals were dismissed on 30-12-1988. The tenants then filed Second Appeals - S.A.No. 140 of 1989 and Batch before this Court. This Court on 30-3-1989 dismissed all those Second Appeals at the admission stage. It appears that, while dismissing the Second Appeals, this Court granted six months time to the tenants to vacate the premises.

9. In the meanwhile, the Governor of Andhra Pradesh issued orders, in exercise of his powers under Sub-section (4) of Section 3 of the Act, authorising the Commissioner, Municipal Corporation of Visakhapatnam (hereinafter referred to as the Competent Authority") to exercise the powers conferred and perform the duties u/s 3 of the Act, vide G.O. Ms. No. 473, dated 4-7-1983.

10. The Competent Authority, after hearing the objections of the landowners, issued a notification on 13-4-1989 u/s 3(2) of the Act deciding to acquire the

property in dispute. That notification was published in the A.P. Gazette on 21-4-1989. Challenging the validity of the said notification, the landowners filed Writ Petition No. 12535 of 1989.

11. During the pendency of that writ petition, the competent authority filed O.S.No. 538 of 1990 before the Court of the III Additional Senior Civil Judge, Visakhapatnam, against the landowners and others praying for permanent injunction restraining the landowners from interfering with its peaceful possession and enjoyment of the "property in dispute" by way of executing the Decrees or otherwise. The tenants were also impleaded as defendants in that suit. Initially an interim injunction was granted in favour of the Competent Authority in I.A.No. 1541 of 1990. Subsequently, that injunction order was vacated and the said I.A. was dismissed on 31-12-1990.

12. Ultimately that suit was also dismissed on 23-12-1998 holding that the Competent Authority has neither title to nor possession of the property in dispute and is, therefore, not competent even to file the suit and claim the relief of injunction. After dismissal of the said suit, the Competent Authority did not choose to file an appeal and allowed the decree in that suit to become final.

13. Some of the tenants filed EA No. 1657 of 1989 before the Court of the IV Additional Junior Civil Judge, Visakhapatnam, to declare the Decree in OS No. 193 5 of 1978 (one of the suits in OS No. 696 of 1978 and Batch) as not executable. That application was dismissed as not maintainable since the decree holder has not filed any E.P. by then. Against that order, the tenant filed CRP No. 49 of 1991. A similar E.A. was filed by the Competent Authority, which was also dismissed by the learned IV Additional Junior Civil Judge, Visakhapatnam. Against that order, the Competent Authority filed CRP No. 48 of 1991. Against the order of the III Additional Senior Civil Judge, Visakhapatnam, dismissing IA No. 1541 of 1990 in OS No. 538 of 1990, the Competent Authority filed CMANo. 16 of 1991.

14. The aforesaid Writ Petition No. 12535 of 1989 filed by the landowners, CRP No. 49 of 1991 filed by the tenants and CRP No. 48 of 1991 and CMA No. 16 of 1991 filed by the Competent Authority were heard together by a learned single Judge of this Court - Justice Immaneni Panduranga Rao (as he then was) - who allowed the Writ Petition and quashed the notification dated 30-4-1989 issued u/s 3(2) of the Act on the ground that the Competent Authority issued the same without giving proper opportunity to the land owners and tenants. Consequently, CRP Nos.48 and 49 of 1991 and CMA No. 16 of 1991 were also dismissed, however, giving liberty to the tenants and, the Competent Authority to move the respective Courts, in future, if necessary, for suitable directions.

15. The Competent Authority, after considering the objections filed by the landowners pursuant to the orders of this Court in Writ Petition No. 12535 of 1989, again issued a notification on 5-4-1991 u/s 3(2) of the Act deciding to acquire the property in dispute. That notification was published in the A.P.

Gazette on 6-4-1991. The landowners then filed Writ Petition No. 7449 of 1991 challenging the validity of the aforesaid notification, On 14-9-1992 a learned single Judge of this Court dismissed that writ petition. Aggrieved by the same, the landowners filed WA No. 1146 of 1992. That writ appeal was allowed by a Division Bench of this Court, on 26-3-1997, and the notification dated 5-4-1991 issued u/s 3(2) of the Act was set aside on the ground that the Competent Authority failed to give proper hearing to the landowners. The matter was remitted back to the Competent Authority for fresh hearing and decision in accordance with law with a direction to complete the same within a period of three months.

16. Thereafter, the Competent Authority heard the parties and again issued a notification u/s 3(2) of the Act, on 23-6-1997, deciding to acquire the "property in dispute" for the purpose of improving the same to make it habitable to human beings. Challenging the said notification, the landowners filed Writ Petition No. 17124 of 1997. While admitting that writ petition, this Court granted interim stay of the impugned notification on 14-8-1997. Subsequently, after hearing both sides, that interim order was made absolute.

17. Some of the tenants filed WPMP No. 20783 of 1997 to implead them as party respondents to the aforesaid Writ Petition No. 17124 of 1997. Even before the said petition was ordered, they have filed WPMP No. 5854 of 1998 to direct the landowners not to evict them from the property in dispute, pending disposal of Writ Petition No. 17124 of 1997. It appears that an ad interim order was granted on 23-2-1998. But, after hearing the parties, that interim order was vacated and WPMP No. 5854 of 1998 was dismissed on 6-3-1998 by his Lordship Justice Syed Sadatulla Hussaini with a observation that the tenants shall not be dispossessed by the landowners without due process of law.

18. That Writ Petition No. 20783 of 1997 (See 17124 of 1997) filed by the landowners is still pending in this Court.

19. The landowners filed 26 E.Ps. -E.P.No. 230 of 1998 and batch - before the IV Additional Junior Civil Judge, Visakhapatnam, against some of the tenants to commit them to civil prison on the ground that they were intentionally avoiding payment of decretal amounts in O.S.No. 696 of 1978 and batch with a dishonest intention, even though they have sufficient means. Those E.Ps., were contested by the tenants on the ground that in view of the notification issued by the Competent Authority u/s 3(2) of the Act as aforesaid, the property in dispute vested in the Government free from encumbrances, by operation of law, and, therefore, the decree holder-landowners cannot execute the Decrees obtained by them. It is pertinent to note here that besides that plea, the tenants did not choose to take the plea that they do not have sufficient means to pay the decretal amounts.

20. After hearing both sides, by order dated 3-8-1998, the IV Additional Junior Civil Judge, Visakhapatnam, rejected that plea of the tenants holding that the

executing Court cannot go beyond the Decree.

21. Aggrieved by the aforesaid order, the tenants filed the present batch of civil revision petitions, which were admitted by this Court on 11-12-1998. On the Stay applications moved along with those Revisions, this Court granted the following interim order on 9-10-1998:

"There shall be stay of arrest only. Insofar as the realisation of the amounts is concerned, the petitioners are liable to pay the same and a time of one month is granted for payment of the half of the amount demanded and for payment of remaining half, a further time of one month thereafter is granted. In default of either of the payments, the stay stands vacated".

22. Admittedly, the tenants have not complied with the aforesaid condition imposed by this Court while granting stay of arrest.

23. Challenging the validity of the very same common order of the IV Additional Junior Civil Judge, Visakhapatnam, in EP No. 230 of 1998 and batch, dated 3-8-1998, the Competent Authority filed these batch of writ petitions.

I will now first take up for consideration the writ petitions filed by the Competent Authority.

24. As already noted hereinabove, the tenants, who are the judgment-debtors, have filed the present civil revision petitions -CRP No. 2191 of 1997 and Batch - against the common order of the IV Additional District Munsif, Visakhapatnam, in EP No. 230 of 1998 and Batch and obtained conditional interim stay of their arrest on 9-10-1998. More than one month thereafter, the Competent Authority filed the present writ petitions challenging that common order passed by the IV Additional Junior Civil Judge, Visakhapatnam (1st respondent in these writ petitions) in EP No. 230 of 1998 and Batch, even though it is not a party to those Execution Petitions, seeking for issue of writs of mandamus declaring the execution proceedings as well as the common order passed by the IV Additional Munsif, Visakhapatnam in EP No. 230 of 1998 and batch as illegal, unsustainable and; without jurisdiction, contending mainly that the tenants are not in a position to pay the decretal amounts as they are very poor, even though such a plea was not taken by the J.Dr-tenants.

25. Sri C. Kodandaram, learned Counsel for the land owners -who are the decree-holders and respondents in these writ petitions as well as the civil revision petitions - raised the following two preliminary objections regarding the maintainability of these writ petitions:

(1) The writ petitions are not maintainable inasmuch as a writ of mandamus can never be issued declaring an order made by a competent Executive Civil Court in an Execution Petition, as illegal and void; and

(2) The Competent Authority has not sustained any legal injury by the impugned common order in the Execution Proceedings nor does it seek enforcement of any

legal right vested in it, hence, it cannot maintain the present writ petitions.

26. Having heard Sri C. Kodandaram, learned Counsel for the landowners, and Sri T.S. Venkata Ramana, learned Counsel for the Competent Authority, at length, I am of the considered view that both the preliminary objections have to be sustained.

First preliminary objection:

27. As already noted, the tenants, who are judgment debtors in O.S.No. 6976 of 1978 and batch and respondents in E.P.No. 230 of 1998 and Batch, have filed the present batch of civil revision petitions and also obtained conditional interim stay of their arrest one and a half month before the present writ petitions were filed by the Competent Authority. Thus, there is absolutely no need for the Competent Authority to file the present batch of writ petitions challenging the very same order of the IV Additional Junior Civil Judge, Visakhapatnam. Yet, the Competent Authority filed these Writ Petitions seeking for a declaration that the decrees passed by the competent civil Court cannot be executed against the J.Dr-tenants.

28. Whether executability of a decree parsed by a competent civil Court can be called in question in a writ proceeding, even though an adequate efficacious remedy of revision provided under the CPC is available to an aggrieved person? is the question that arises now for consideration.

29. Availability of an efficacious alternative remedy is always considered as bar to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The rigour of this bar is much more in cases where the available alternative remedy is an appeal or revision provided under the C.P.C. The Supreme Court considered this question in *Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others*, , On a review of the entire case law on the subject, the Supreme Court held thus:

"8. ... The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil Court or to deny defences legitimately open in such actions. ... So far the question of executability of a decree is concerned, the CPC contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of Order XXI of the Code take care of different situations, providing effective remedies; not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the Civil Court. The remedy under the CPC is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting (relief) to a judgment-debtor or a claimant-objector can be justified",

30. In *Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others*, the Supreme Court again reiterated the well recognized principle that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot convert itself into an appellate or revisional Court and interfere with an order passed by the competent civil Court.

In para 8 of the said report, it was held thus:

"8. We are of the view that the High Court not only fell into patent error but also exceeded its jurisdiction under Article 226 of the Constitution of India. Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a civil Court under the ordinary law. When a suit is pending between the two parties the interim and miscellaneous orders passed by the trial Court - against which the remedy of appeal or revision is available - cannot be challenged by way of writ petition under Article 226 of the Constitution of India. Where the civil Court has the jurisdiction to try a suit, the High Court cannot convert itself into an appellate or revisional Court and interfere with the interim/miscellaneous orders of the civil Court. The writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum".

31. From the aforesaid authoritative pronouncements of the Supreme Court, it is clear that the questions relating to executability of a decree passed by a competent Civil Court can never be permitted to be agitated in a writ application by the J.Dr., or the person aggrieved. When such is the settled law, can the competent authority, who is neither a J.Dr., nor a person aggrieved by the decrees, be permitted to challenge the orders of the competent civil Court in the Execution Petitions? The answer must be an emphatic no. Therefore, I have no hesitation in upholding the First Preliminary Objection.

Second preliminary objection:

32. As already noted hereinabove, the execution petitions, out of which the present civil revision petitions and the writ petitions arose, were filed by the D.Hr-landowners against the J.Dr-tenants under Order 21, Rule 37 CPC for their arrest and committing them to civil prison on the ground that though they have sufficient means to pay the decretal amount, they are intentionally avoiding payment of the same with a dishonest intention. The Competent Authority has nothing to do with those E.Ps., and, in fact, it was not a party to those Execution proceedings. It may also be noted here that the suit filed by the Competent Authority against the landowners in O.S.No. 538 of 1990 in the Court of the III Additional Senior Civil Judge, Visakhapatnam, seeking permanent injunction restraining them from interfering with its peaceful possession and enjoyment of the "property in dispute" by way of executing the decrees or otherwise, was dismissed on 23-12-1998, The Competent Authority did not file any appeal

against the said decree and allowed the same to become final. Therefore, the Competent Authority cannot prevent the execution of the decrees lawfully obtained by the landowners in O.S.No. 696 of 1978 and batch and in any event as regard to that part of the decrees relating to payment of rents. Hence, the Competent Authority has no right to contest the execution petitions - E.P.Nos.230 of 1998 and Batch -filed by the D.Hr-landowners for arrest and committing the J.Dr-tenants to civil prison. Further more, none of the Competent Authority's legal rights, has been infringed by the common order of the IV Additional Junior Civil Judge, Visakhapatnam in E.P.No. 230 of 1998 and Batch.

33. It is settled law that for maintaining a writ application under Article 226 of the Constitution of India seeking for issue of writ of mandamus, the applicant must establish that the impugned order has infringed his legal or fundamental right. See: the decisions of the Supreme Court in *State of Punjab Vs. Suraj Parkash Kapur etc.*, , and *Shabi Construction Company Vs. City and Industrial Development Corporation and Another*, . It is no doubt true that the law of locus standi underwent radical changes in the recent past, in a particular, in cases relating to public interest. If the interest of the public at large is invaded; or violated by an administrative action, a public-spirited person can file a writ petition challenging such action even though; none of his legal rights or fundamental rights is infringed. See: the decision of the Supreme Court in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, .

34. Even in cases of public interest litigation, recently the Supreme Court has taken the view that the Court can exercise the writ jurisdiction at the instance of third party only when it - is shown that those persons or class of persons whose legal or fundamental rights were invaded or threatened to be invaded are not in a position to approach the Court by reason of their poverty or socially disadvantaged position. See: the decision of the Supreme Court in *Vinoy Kumar Vs. State of U.P. and Others*, .

35. Recently, a three Judge Bench of the Supreme Court in *Balco Employees Union (Regd.) v. Union of India* AIR 2001 SCW 5135, while reviewing and re-emphasising the parameters of Public Interest Litigation, reiterated the aforesaid view and held thus:

"Para 87. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violations of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to Court due to some disadvantage. In those cases also it is the legal rights which are secured by the Courts. We may, however, add that Public Interest Litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a Court of law, but, a Public Interest Litigation at the behest of a stranger ought not to be

entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the Court".

The cases on hand are not the cases involving public interest. As already noted hereinabove, they relate to enforcement of money decrees. Further more, the tenants have already approached this Court by filing civil revision petitions against the impugned order in the E.Ps. Therefore, the traditional view that a writ of mandamus cannot be issued unless it is shown that the petitioner has a legally enforceable right and that right has been invaded by the impugned action, must prevail. Consequently, it should be held that the Competent Authority has no locus standi to maintain these writ petitions.

36. Thus, since both the Preliminary Objections taken by the Counsel for the landowners, are sustained, the writ petitions are liable to be dismissed.

37. Now the question that remains for consideration is as to the costs.

38. As already noted hereinabove, the Competent Authority, who has no locus standi to maintain these writ petitions, filed the same, knowing fully well that the J.Dr-tenants have already filed Civil Revision Petitions against the impugned common order in E.P.No. 230 of 1998 and Batch and also obtained conditional stay of their arrest. In my considered view, this is nothing but abuse of the process of the Court. The Competent Authority is, therefore, liable to be mulct or with exemplary costs.

However, considering the fact that the Competent Authority has no personal interest in the matter, I dismiss these writ petitions with costs of Rs.500/- in each writ petition.

39. Now I will take up for consideration the civil revision petitions.

40. As already noted hereinabove, the landowners filed E.P. No. 230 of 1998 in O.S.No. 1935 of 1978 and batch before the IV Additional Junior Civil Judge, Visakhapatnam, to arrest and commit the J.Dr-tenants into civil prison on the ground that they are wilfully and dishonestly avoiding payment of the decretal amounts even though they are having sufficient means. Those E.Ps., were contested by the tenants mainly on the ground that in view of the notification issued by the Competent Authority u/s 3(2) of the Act, the property in dispute has vested in the Government without any encumbrances by operation of law, and that, therefore, the D.Hr-landowners cannot execute the decrees obtained by them.

41. As already noted hereinabove, besides this plea, the J.Dr-tenants did not even take the plea that they do not have sufficient means to pay the decretal amounts. Following the well settled dictum that the Executing Court cannot go beyond the decree the IV Additional Junior Civil Judge rejected the said plea by his common order dated 3-8-1998. Against the said common order, the tenants have filed the present civil revision petitions.

42. As already noted hereinabove, in these revision petitions, this Court granted an interim stay of arrest of the petitioners (J.Dr- tenants) on 9-10-1998 on condition of their paying half of the decretal amount within one month and the balance amount within another month thereafter. It was also further made clear that in default of either of the payments, the stay will stand vacated. As already noted, the J.Dr. tenants did not comply with the aforesaid conditional order.

43. Having carefully perused the order of the IV Additional Junior Civil Judge, I am of the view that the learned Junior Civil Judge is right in rejecting the J.Dr-tenants "plea by holding that the executing Court cannot go beyond the decree. Sri C.V. Subrahmanya Narsu, Counsel for the tenants, could not and did not even dispute the correctness of the aforesaid finding of the learned Junior Civil Judge. Therefore, I have no hesitation to affirm the order of the learned IV Additional Junior Civil Judge in rejecting the plea of the J.Dr-tenants that the decrees obtained by the D.Hr-landowners are not executable.

44. But, I find a vital deficiency in the order of the learned Junior Civil Judge.

45. Section 51 of the CPC provides that a Court can order execution of a decree by several modes. One such mode specified under Sub-section (c) is arrest and detention of the J.Dr., in prison for such a period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section. Proviso to Section 51, however, mandates that where the decree is for the payment of money, execution by detention in prison shall not be ordered by the Court without giving an opportunity to the J.Dr., of showing cause why he should not be committed to prison and without recording its satisfaction that the J.Dr., has or has had, since the date of decree, sufficient means to pay the decree amount or some substantial part thereof, but is neglecting or refusing to pay the same.

46. Rule 30 of Order 21 CPC provides for execution of the money decree either by committing the J.Dr., to civil prison or by attachment and sale of his property or by both. In this case, as already noted, the D.Hr-landowners opted to execute the money decree by the mode of committing the J.Dr. tenants to civil prison.

47. The procedure that is to be adopted and the enquiry that has to be conducted by the Court when a decree-holder opts for the mode of execution of the money decree by committing the judgment-debtor to civil prison, is elaborately laid down under Order 21, Rules 37 to 40 CPC under the heading "Arrest and detention in the civil prison". A careful reading of these provisions would clearly show that this part of the CPC is a self-contained Code in itself providing for all eventualities.

48. Rule 37(1) mandates that when an application for execution of a money decree by arrest and detention in the civil prison of a judgment-debtor is filed, the Court shall first issue a notice calling upon the judgment-debtor to appear before the Court on the date specified in the notice and show-cause as to why he should not be committed to civil prison. Proviso to the said Rule, however, gives

the circumstances under which the Court can straight away issue warrants of arrests without issuing such notice. Sub-rule (2) thereof enjoins that if the judgment-debtor failed to appear before the Court in obedience to the notice issued under Sub-rule (1), the Court shall, at the instance of the decree-holder, issue a warrant for the arrest of the judgment-debtor. Rules 38 and 39 provides for the method and manner of issue of warrant of arrest and payment of subsistence allowance. Rule 40, which is most important Rule, describes the procedure that has to be adopted by the Court when the judgment-debtor appears before it pursuant to the notice issued under Sub-rule (1) of Rule 37 or is produced before the Court after arrest under Rule 38. It will be useful here to extract Rule 40, in toto, (as amended in Andhra Pradesh) which is as under:-

"40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest:--(1) When a judgment-debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under Sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under Sub-rule (1) the Court may, subject to the provisions of Section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under Sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

(6) During the temporary absence of the Judge who issued the warrant under Rule 37 or 38, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality, or, where the arrest is made on a warrant issued by the.

District Judge, the warrant of committal may be signed by any Subordinate Judge or District Munsif, empowered in writing by the District Judge in this behalf.

(7) No judgment-debtor shall be committed to the civil prison or brought before the Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in Sub-rule (1) unless and until the decree-holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort".

49. A careful reading of the aforesaid Rule would clearly show that the enquiry under Rule 40 shall always be made in the presence of the judgment-debtor and during that enquiry the Court should give an opportunity to the judgment-debtor of showing cause why he should not be committed to civil prison. Sub-rule (2) thereof provides that if such an enquiry is not concluded in one day, the judgment-debtor shall be detained in custody of an officer of the Court, till the enquiry is completed. It also provides for release of the judgment-debtor during such enquiry on his furnishing security to the satisfaction of the Court for his appearance when required. Sub-Rule 3 read with proviso to Section 51 CPC clearly mandates that the Court should enquire into the means of the judgment-debtor to pay the decree or some substantial part thereof. On such enquiry, if the Court is satisfied that the judgment-debtor has, or has had, since the date of the decree, the means to pay the amount of the decree or some substantial part thereof, but is refusing or neglecting or has refused or neglected to pay the same, it has to record such satisfaction in writing and then only make an order for detention of the judgment-debtor in civil prison and for that purpose should cause the judgment-debtor to be arrested, if he is not already under arrest.

50. Considering the aforesaid provisions under Rules 37 to 40 of Order 21, the superior Courts have held that there is a distinction between arrest of a judgment-debtor and his detention in civil prison -while arrest can be ordered without conducting an elaborate enquiry as ordained under Rule 40, if the judgment-debtor fails to appear before the Court after receiving the notice issued under Sub-rule (1) of Rule 37, detention of the judgment-debtor in civil prison cannot be ordered without conducting the enquiry as laid down under Sub-rule (1) of Rule 40 and, in particular, into the means of the judgment-debtor as mandated under proviso to Section 51 CPC. See: the decision of the Madras High Court in P.G. Ranganatha Padayachi Vs. The Mayavaram Financial Corporation Ltd., , and the decision of a Division Bench of this Court in Suravarapu Putrayya v. Maddukuri Veeraju 1964 An. W.R 38, and the decision of a learned single Judge of this Court in D.S. Varma Vs. Gururu Veera Raghava Rao, .

51. In the present case, the learned IV Additional Junior Civil Judge only rejected the J.Dr-tenants" plea that the decrees are not executable, but did not take further steps and conduct an enquiry as ordained under the aforesaid provisions i.e., proviso to Section 51 read with Rule 40 to Order 21 CPC. It is for this

reason, while confirming the order of the IV Additional Junior Civil Judge insofar as it relates to rejection of the judgment-debtors' plea that the decree is not executable, I am remitting the matters back to the IV Additional Junior Civil Judge, Visakhapatnam, for taking necessary steps and conducting an enquiry as ordained under Order 21, Rule 40 read with proviso to Section 51 CPC. At the cost of repetition, I would like to stress here that such enquiry shall be made only in the presence of the J.Dr-tenants and the J.Dr. tenants should be present throughout such enquiry. If for any reason, the J.Dr. tenants fail to appear before the Court during such enquiry the IV Additional Junior Civil Judge can secure the presence by causing their arrest as provided under Order 21, Rules 37(2) and 38 CPC.

52. Since the matters are already delayed, I direct the IV Additional Junior Civil Judge, Visakhapatnam, to conclude the enquiry within a period of three months from the date of receipt of a copy of this order.

53. The civil revision petitions are allowed to the extent indicated above. No costs.