

(2015) 06 MAD CK 0393

In the Madras High Court

Case No : Contempt Petition (MD) No. 724 of 2015

R. Jeyaraman

APPELLANT

Vs

Senthilkumari

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 18

Citation : (2015) 06 MAD CK 0393

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : PT. S. Narendra Vasan, for the Appellant; N. Manoharan, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Vide Judgment and Decree, dated 23.09.2012, the first appeal in A.S. (MD) No. 190 of 2011 has been disposed of. The decree, dated 23.09.2012, reads as follows:

"i) that the compensation amount be and hereby is re-fixed to Rs. 5,400/- (Rupees five thousand and four hundred only) per cent instead of Rs. 7,200/-.

ii) that the appellant herein/Referring Officer do pay the respondent herein/claimant the compensation at Rs. 5,400/- per cent;

iii) that the Government be and hereby is directed to deposit the compensation amount at the rate of Rs. 5,400/- per cent if not deposited any amount; along with other statutory payments, within a period of three months from the date of receipt of a copy of this judgment.

iv) that there be no costs in this appeal."

2. Contending inter alia that despite the directions, the respondent has not implemented the same, the present contempt petition is filed.

3. During the course of hearing, Mr. PT.S. Narendravasan, learned counsel for the petitioner submitted that earlier an Execution Petition was filed but, the same was dismissed for default. Failure to execute a decree in the manner known to law does not give a cause of action for filing a contempt petition. Needless to state that decrees can be executed by filing execution petitions before the concerned court. Law on the point of limitation, is applicable for execution of a decree. It is for the petitioner to workout his remedy in the manner known to law. Useful reference can be made to the judgment of the Hon"ble Supreme Court in R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, (2000) 4 JT 629 : (2000) 3 SCALE 365 : (2000) 4 SCC 400 : (2000) 2 UJ 1019 , wherein the Hon"ble Apex Court has held as follows:

"7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

8. Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment debtor and hence the court should not normally lend help to a party who refuses to take legally-provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree."

4. Even writ petitions cannot be filed for executing decrees. Useful reference can be made to few decisions.

(i) In Vemula Prabhakar and Others Vs. Land Acquisition Officer and Revenue Divisional Officer, Peddapalli, Karimnagar Dist. and Another, (2002) 1 ALD 200 : (2002) 1 ALT 322 , the question raised before the Court was whether the High

Court, in exercise of its jurisdiction, under Article 226 of the Constitution of India, can issue a writ of or in the nature of Mandamus, directing the respondents to make payment in relation to the amount enhanced by the civil court, in a reference made under Section 18 of the Land Acquisition Act, 1894 ("the Act" for brevity). Reliance was placed on a decision in *Sur Reddy vs. Special Deputy Collector(LA), Medak*, reported in 1997 (1) ALD 31, wherein, it has been held that existence of remedy by way of execution petition before a civil court is not a bar and the writ petition is maintainable. While answering the said question, a Division Bench of Andhra High Court, has held as follows:-

"A writ of or in the nature of mandamus will be subject to exercise of sound judicial discretion. The general rule is that a writ of mandamus would ordinarily not be issued when there exists an adequate specific legal remedy whereby the petitioner can be afforded relief in respect of the same subject matter. Mandamus is important public law remedy and does not generally supersede legal remedies. But alternative remedy must be efficacious to accomplish the same purpose wherefor mandamus is sought for and must be equally convenient, beneficial and effective. There cannot be any doubt that alternative remedy is not an absolute bar to the maintainability of a writ petition.

Assuming that a writ petition, would be maintainable, a writ of mandamus can only be issued. If there is a violation of such a writ, a contempt petition will also not be maintainable for execution of the decree. It is accepted at the Bar that even in such a case, for the purpose of execution, the petitioner has to knock the doors of the civil court. It would not be thus correct to contend that the mandamus can issue as a rule. In this view of the matter, we are of the opinion that for execution of decree a writ of mandamus would not be ordinarily entertained by this Court.

It is admitted by the learned counsel for the petitioners that if a mandamus issued by this Court is not obeyed, the only remedy is by way of contempt. In *BHAGYABATI PRAMANIK (supra)* and *KAPILDEO PRASAD SAH (supra)*, the Supreme Court held that the contempt proceedings cannot be a substitute for execution proceedings. On the other hand, in an execution petition, as observed by us, a decree can be enforced either by attachment of property movable or immovable, of the State and also in a given case even the State has a judgment/decree, it can raise defence for execution."

Ultimately, the Division Bench of Andhra High Court, held that it cannot be said that the remedy provided for under the Code of Civil Procedure, 1908 is not adequate remedy so as to enable this Court to entertain the writ petition.

(ii) In *Suganmal Nandlal Bhandari Vs. State of Madhya Pradesh and Others*, AIR 1962 MP 10 : (1962) ILR (MP) 48 , a Hon"ble Division Bench of Madhya Pradesh High Court held as follows:-

"A writ of mandamus cannot be issued for the execution of a decree or an order. In this connection it would be sufficient to refer to a decision of the Calcutta High

Court in *Kesho Prasad Singh Vs. The Board of Revenue*, (1911) ILR (Cal) 553 . That was a case where the plaintiff had obtained a decree for recovery of possession of an estate against an infant under the Court of Wards. After the suit was decreed by the trial Court the defendant, viz. the Court of Wards, preferred an appeal to the High Court. Pending the appeal the plaintiff made an application to the Court of Wards for the release of the estate and handing over possession of the estate to him in accordance with the decree of the trial Court. When the Court of Wards declined to comply with the plaintiff's request, the plaintiff made an application to the Calcutta High Court under Section 45 of the Specific Relief Act and obtained a rule calling upon the Court of Wards to show cause why the estate should not be released and delivered to the plaintiff. In discharging the rule the learned Judges of the Calcutta High Court observed:

"It is an elementary principle that recourse ought not to be allowed to an extraordinary remedy of this description, when it is not really needed. In the case before us, the plaintiff is entitled to sue in ejectment; he has brought such a suit and has been successful; he is entitled to execute his decree, but has not yet taken any steps in that direction. It is well settled that a mandamus will never be granted to enforce the general law of the land which may be enforced by action; for instance, where the applicant has the ordinary legal remedy of an execution mandamus does not lie.

In *Reg. v. Victoria Park Co.*, (1841) 1 QB 288 : 55 R. 249 action was brought against the treasurer of a Company and judgment was entered up against the Company. The Company had no assets. A writ of mandamus was sought commanding the Company to pay a sum of money recovered from them in the action. The Court refused to issue a writ of mandamus. The Court observed:

" here the plaintiff seeks only the payment of the debt and costs: for this an execution by fi. fa. is a, perfect remedy in its nature; and, if we were to issue the writ because in this particular case there are no corporation chattels seizable, it would be difficult on principle to re-fuse to issue it in any case where the sheriff should return *milla bona*, whether the writ had issued against a corporation or an individual; for in principle there is no distinction between the two. We are compelled, therefore, to refuse the rule for a mandamus to the corporation, to pay."

(iii) In *Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others*, AIR 1991 SC 2251 : (1991) 4 JT 43 : (1991) 2 SCALE 611 : (1991) 4 SCC 379 : (1991) 1 SCR 119(1) Supp : (1991) 2 UJ 730 , the Hon"ble Supreme Court held as follows:-

"The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. 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."

(iv) In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, (2011) 1 CTC 854 : (2010) 7 JT 529 : (2011) 1 RCR(Rent) 1 : (2010) 7 SCALE 428 : (2010) 8 SCC 329 : (2010) 8 SCR 836 : (2010) AIRSCW 6387 , the Hon"ble Supreme Court has held as follows:-

"78. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases High Courts, in a routine manner, entertain petition under Article 227 over such disputes and such petitions are treated as writ petitions.

79. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown, that a private individual is acting in collusion with a statutory authority."

5. With the above observation, we are not inclined to entertain the contempt petition and we wish to add that it may lead to opening of a pandora box, for execution of all decrees passed in various proceedings. The contempt petition is, accordingly, dismissed.