(1997) 12 AP CK 0070

In the Andhra Pradesh High Court

Case No : C.R.P. No. 3582 of 1997

S. Ranga Reddy — APPELLANT

Vs

Land Acquisition Officer and Others — RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Income Tax Act, 1961 — Section 194A, 23(1)

Citation : (1998) 1 ALD 375 : (1998) 4 ALT 515

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Mr. P. Gangarami Reddy, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Judgement

1. The order of the learned Sub-Judge, Mahabubnagar in I.A.No.61/97 in O.P.No.30/86 dated 30-6-1997 is challenged by the petitioner, who is the decree holder in O.P.No.30/86. The decree in O.P.No.30/86 arose out of a land acquisition dispute. It was confirmed by this Court in appeal and further on by the Hon''ble Supreme Court in the subsequent proceedings. The petitioner presented a cheque petition to withdraw the compensation of Rs.6,00,000/- and it was ordered. Respondent No.1, the Land Acquisition Officer filed the application I.A.No.61/97 and objected for payment of the amount by way of interest on solatium and on additional amount awarded and the income tax on total interest to be deducted at 10% u/s 194A of the Income Tax Act. Reliance was placed on Tehri Hydel Development Corporation v. S.P. Singh and others, 1997 (1) CCC 50 (SC). The rule laid down therein was that the claimants in land acquisition are not entitled to interest on solatium and the additional sum awarded u/s 23(1A) of the Income Tax Act (sic Land Acquisition Act). Therefore, the learned Sub-Judge held that the petitioner is not entitled to the interest on the solatium and, therefore, the additional amount awarded. It was also pointed out and found that no income tax was deducted on the total interest awarded in the case which was to be deducted u/s 194A of the Income Tax Act. Therefore,

the learned Sub-Judge calculated the whole amount and fixed Rs.5,70,882/- to be paid to the petitioner deducting interest on solatium and further deducting Rs.31,892/- and fixed the net amount payable to the claimant at Rs.5,38,990/-. Aggrieved by that, the present revision is filed.

2. The learned advocate for the petitioner has contended that when once there was a decree in the land acquisition proceedings confirmed upto the Supreme Court, the learned Sub-Judge had no powers to review it or question the correctness of the same, much less the land acquisition officer had no right to question it on such grounds. There is all the force in this contention.

3. The learned Government Pleader appearing on behalf of the Government for Respondent No. 1 the Land Acquisition Officer contends that since the law has been settled by the Supreme Court, Respondent No. 1 was entitled to bring it to the notice cf the Court so that the order could have been reviewed as an error apparent on the face of the record. There is no force in this contention.

4. The payment of the amount under a decree after execution or recovery is part of the execution only and on payment, the full satisfaction of the decree will be recorded and, therefore, the question will be one arising u/s 47 of the Code of Civil Procedure. The correctness or otherwise of the decree or the reasoning supporting the decree or the judgment is not one of the questions to be determined in a petition u/s 47 CPC. In a payment of cheque proceedings, the Court had no powers to revise the decree unless a review petition had been filed to review the very decree by the highest Court which is confirming the order. In that view of the matter, the order of the learned Sub-Judge cannot be supported. The only question is whether the amount towards income tax could be deducted out of the amount to be paid under the decree. It is not disputed that as per Section 194A of the Income Tax Act, such an amount had to be deducted. Even otherwise, any income is taxable by the income tax authorities. However, that can be ultimately adjusted by filing the return if there is any excess payment which may be refunded by the income tax authorities. Therefore, barring the deduction of Rs.31,892/- towards income tax as determined by the learned Sub-Judge, no other amount could be deducted out of the amount claimed by the petitioner.

5. In the result, the Civil Revision Petition is allowed and the order of the learned Sub-Judge, Mahabubnagar in I.A.No.61/97 dated 30-6-1997 is modified to the effect that out of the amount payable to the petitioner-claimant only Rs.31,892/- shall be deducted. No costs.

