
(2016) 08 AHC CK 0129

In the Allahabad High Court

Case No : Civil Revision Defective No. 61 of 2016

Uttar Pradesh Avas Evam Vikas Parishad

APPELLANT

Vs

Jagdish Prasad

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2016) 8 ADJ 694

Hon'ble Judges : Attau Rahman Masoodi, J.

Bench : Single Bench

Advocate : Anurag Singh, Advocate, for the Revisionist; Md. Aslam Khan, Advocate, for Opposite Party; Anurag Singh, Advocate, for the Revisionist; Mohd. Aslam Khan, Advocate, for the Opposite Party; Anurag Singh, Advocate, for the Revisionist; Mohd. Aslam Khan, Advo

Final Decision : Disposed Off

Judgement

Attau Rahman Masoodi, J.— Heard Sri O.P. Srivastava, learned Senior Counsel assisted by Sri Anurag Singh, learned Counsel for the revisionists and Sri Mohd. Arif Khan, learned Senior Counsel assisted by Sri Manoj Mehrotra, learned Counsel for the respondents.

2. This bunch of revisions arises out of a common order passed in the execution proceedings initiated by the respective claimants for execution of decree in the light of Hon"ble Apex Court judgement dated 26.08.2003 passed in Civil Appeal Nos. 6365-6382 of 1999.

3. In brief, it may be noted that land acquisition proceedings after award of compensation became subject matter of dispute in several references and finally the matter was decided by this Court vide judgement dated 5.12.1987 allowing some objections raised by the Parishad and simultaneously, claims in favour of the beneficiaries were partly allowed whose land was acquired way back in the year 1974 and possession taken over in the year 1987, keeping in view the Amendment Act, 1984.

4. The judgement passed by this Court gave rise to Civil Appeal Nos. 6365-6382 of 1999 arising out of the Special Leave Petitions which were entertained by restricting the notice on the questions extracted below:-

(1) Whether solatium and interest should have been awarded as per the Land Acquisition (Amendment) Act, 1984 as laid down by this Court in U.P. Avas Evam Vikas Parishad v. Jainul Islam and Another, (1998 (2) S.C.C. 467.

(2) Whether appropriate compensation should have been awarded for structures and Tube Well situated on the land concerned and concerned, the grounds challenged were limited as indicated above.

5. Leave was granted and the petitions were converted into Civil Appeals aforementioned and were heard on the questions of notice and a final judgement was rendered on 26.08.2003 wherein the Hon''ble Apex Court held that the claimants would be entitled to solatium @ 30%, interest and additional compensation as per the Land Acquisition (Amendment) Act, 1984. In addition thereto, the beneficiaries were also held entitled to compensation against the Tube Well and structures. The Parishad was also permitted to deduct development charges @ 25% from the compensation awarded to the claimants meaning thereby that the compensation would be awarded at the rate of Rs. 7.50 instead of Rs. 10/-.

6. The execution proceedings pending since last twenty three years proceeded in the light of Hon''ble Apex Court judgement which settled the rights and obligations between the parties in the manner stated above. The record reveals that claims were put up in the light of Apex Court judgement before the execution court by filing computation chart dated 22.04.2010. The claims put up were subjected to objections by the Parishad and after due opportunity a detailed judgement was passed by the execution court on 02.03.2012. The judgement dated 02.03.2012 rejected the contradictory computation charts put up by the Parishad whereas the computation chart filed by the claimants being found in consonance with the Apex Court judgement was affirmed and consequently an order was passed for complying with the decree accordingly. The execution court while passing the order dated 02.03.2012, however, left mathematical and clerical errors open to be rectified.

7. It appears that Parishad taking advantage of this part of the judgement, filed detailed objections afresh so as to reopen the order/judgement dated 02.03.2012 and instead of complying with the order, proceeded to raise fresh issues on the same premise. The objections raised by the Parishad were revisited and while dealing with the objections, the execution court has opined that such a course was impermissible to the judgement debtor for more than one reason. Firstly the court below has recorded that the issue of entitlement had attained finality vide order dated 02.03.2012 which remained unchallenged and secondly, the judgement debtor had put forth the same objections as were considered earlier.

8. The matter was again dealt with by a detailed order passed on 04.01.2016 which is the subject matter of challenge in this bunch of civil revisions.

9. It is undisputed between the parties that the judgement passed by the execution court on 02.03.2012 has remained unchallenged as such, insofar as the issue of computation is concerned, the same cannot be reopened by the execution court within the purview of Section 47 of the Code of Civil Procedure. Likewise the objection that the order dated 02.03.2012 was passed by the execution court without getting original decree modified, this ground also does not hold much water for the reason that the Apex Court judgement has clarified the position with respect to the rival claims set up by the parties. Insofar as the mathematical and clerical errors are concerned, on a pointed question put to the learned Counsel for the revisionists as to what are the mathematical and clerical errors in the computation details dated 22.04.2010, the query of the court was not satisfactorily replied.

10. It is true that the execution court by its own judgement dated 02.03.2012 was free to correct clerical/mathematical mistakes and once an objection on that premise was raised before the court below, a finding ought to have been recorded on this aspect of the matter.

11. From the impugned order, it is noted that no such finding has been recorded by the execution court. To the limited extent that mathematical/clerical errors are open to be rectified in the light of order dated 02.03.2012, I hereby set aside the order dated 4.1.2016 and the matter is remitted back to the court below for consideration of the mathematical and clerical error and the same may be decided expeditiously.

12. With the aforesaid liberty, the revisions are disposed of and the court below is directed to decide the matter in the light of the Apex Court judgement expeditiously.