

ORDER ON I.A.No.XI

This application is filed U/S.75(e), Order 26 Rule 9, 10A r/w/s 151 of CPC by the respondent No.4 (a) to (e), 8, 9, 10 and 11 seeking to appoint court commissioner for local investigation of land bearing Sy.No.440/1 (Sy.No.440/3) of D.S.Halli, Chitradurga taluk, wherein portion of the land is acquired by the NHAI for the purpose of widening of national highway. It is contested by the respondent No.1(a), (b) and (c) by filing their written objections.

2. I have heard the arguments of Sri. OLM Adv. for the applicants and Smt. RHS Adv. for the opponents. Perused the case file.

3. Now the following points would arise for my consideration:

1. Whether it is just and necessary to appoint court commissioner to survey the land as prayed for?

2. What order?

4. On going through the case file and submission canvassed by both side as well as evidence adduced by the parties so far, my findings to the above points are as under :-

Point No.1 – In the affirmative,

Point No.2- As per final order, for the following:

REASONS

5. Point No.1:- This reference is made U/S.3H(4) of NH Act, 1956 by SLAO/CALA to resolve the dispute in respect of acquiring of 11312 Sq.mtrs. of land in Sy.No.440/3 of

Doddasiddavvanahally, wherein he has awarded compensation of Rs.1,17,93,527/-. After passing the award when the petitioner was taking steps to make payment of the sum awarded, the dispute arose amongst the respondents, as such this reference is made.

6. In their objection statement the respondent No.1, 5(a) to 5(g) submit that since the RTC is standing in the names of all the respondents, all of them are entitled for compensation, whereas respondent No.4(a) to (e), 8 to 11 allege that registered partition took place in their family on 13.3.1975, therefore they submit that infact acquisition has been made in the land belonging to them and other respondents have no right or interest in the impugned award. In the meanwhile alleging that they have filed suit for partition and separate possession at O.S.No.81/2024 as there was no partition in the family property bearing Sy.No.440/2, the respondent No.1, 5(a) to (g) filed copy of the plaint in order to show that including the SLAO, they have made all other respondents as party defendants in the said suit and it is pending on the file of Prl. Civil Judge & JMFC, Chitradurga.

7. In view of these rival submissions nonetheless parties have adduced their oral evidence and also have produced documents in support of their respective contentions, considering the substantial amount involved in the reference petition and also to resolve the dispute amongst them and once for all, I feel that it is just and necessary to appoint the ADLR, Chitradurga taluk as court commissioner

to inspect the land bearing Sy.No.440/1 (Sy.No.440/3) of D.S.Hally, to survey the same, prepare the sketch and mahazar and report to this court in order to find out, exactly in whose portion of the land the national highway has passed. I think the said report of the court commissioner would resolve the dispute once for all and in all respects. Hence I answer this point in the affirmative.

8. Point No.2:- In view of my above finding, I proceed to pass the following:

ORDER

I.A.No.XI filed U/S.75(e), Order 26 Rule 9, 10A r/w/s 151 of CPC by the respondent No.4 (a) to (e), 8, 9, 10 and 11 is allowed.

The ADLR, Chitradurga Taluk is appointed as a court commissioner to do the following things.

1. The said court commissioner shall visit the land bearing Sy.No.440/1 (Sy.No.440/3) of D.S.Hally, Chitradurga taluk and survey the same and prepare the sketch and mahazar and submit his detailed report to this court.
2. The court commissioner shall not expect any kind of memo of instruction from the parties.
3. The court commissioner shall visit the said land on ----- between ----- time without causing any kind of notices to the parties and he shall proceed with the commission work irrespective of the presence or absence of the parties.

4. Similarly parties to the proceedings i.e. respondents shall appear before the court commissioner in the said land on the above said day, time and place and facilitate the court commissioner in carrying out the commission work, without expecting any notice from him.
5. Applicants i.e. respondent No.4 (a) to (e), 8, 9, 10 and 11 shall furnish copy of I.A.No.XI to the court commissioner and shall deposit commission fee of Rs.3,000/-.
6. Parties shall not seek any kind of adjournment from the court commissioner in carrying out the commission work.

Office to issue commission warrant without waiting for deposit of commission fee.

Prl. District & Sessions Judge,
Chitradurga.