

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

Public Interest Litigation No.381 of 2013

-
DATED:09.02.2015

Between:

Captain Ikram A. Kaleem,
Hyderabad and others.

... Petitioners

And

The State of Telangana,
Represented by its Secretary,
Revenue Department,
Hyderabad and others.

....Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-
Public Interest Litigation No.381 of 2013

Order: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This Public Interest Litigation has been filed for the following
reliefs:

“To issue a Writ one in the nature of a Writ of
Mandamus or any other appropriate Writ, Direction or Order:

(a) declaring the G.O.Ms.No.154, Revenue (U.C.IV)
Department dated 13.02.2006 in favour of the 5th Respondent
Society as illegal being contrary to G.O.ms.No.455, Revenue (U.C.I)
Department, dated 29.07.2002 itself and set aside the same;

(b) by causing detailed enquiry into the affairs of the society,
misappropriation of funds received from various people and
institutions by also taking suitable steps against the office bearers of
the society as per law

(c) and pass such other order or orders as this Hon'ble
Court may deem fit and proper in the circumstances of the case.”

In essence, the petitioners say that the 5th respondent
society has been allotted a plot of vacant land admeasuring 9000
and odd sq. mtrs., by G.O. Ms. No. 154, Revenue (U.C.IV)
Department, dated 13.2.2006 and this has been done contrary to
the previous Government Order, G.O.Ms. No. 455, Revenue
(U.C.I) Department, dated 29.7.2002, which does not permit the
allotment of any vacant land.

It is an undisputed fact that the land is a vacant one and by

virtue of above order of allotment, the 5th respondent-society started asserting its ownership and while doing so, a portion of the land has been transferred to third parties. Learned counsel for respondents drew our attention to the judgment of the Hon'ble Supreme Court dated 9.1.2013, in another matter, in particular, para-15 thereof, which is quoted herein.

“We are of the considered opinion that, since the Appellant-Society has become the absolute owner of the land by virtue of the order dated 13.2.2006 passed by the State Government, ”.

Learned counsel for the petitioners says that before the Hon'ble Supreme Court, the legality and validity of the aforesaid order dated 13.2.2006 was not questioned and it was rendered on a different footing assuming that the allotment was lawful and valid. According to him, we can proceed with the matter to pass appropriate orders as prayed for.

We are of the view that it is not permissible to do so. If we do so, we would fall in serious breach of judicial discipline. If we decide to grant the reliefs, we have to obviously hold that the aforesaid order of allotment is illegal. Consequently, the 5th respondent-Society is not the owner, which would be inconsistent and contrary to the aforesaid opinion of the Hon'ble Supreme Court.

It is settled position of law that even the obiter of the Hon'ble Supreme Court binds the High Court. In this case, we find that there has been a clear declaration of ownership of this plot of land in favour of the 5th respondent by the Hon'ble Supreme Court. It may be true that legality and validity of the aforesaid G.O., which is agitated before us was not the issue. Nonetheless, we are bound by the aforesaid observation of the Supreme Court.

We therefore close this Public Interest Litigation giving liberty to the petitioners to approach the Hon'ble Supreme Court for appropriate step, if so advised.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

9th February, 2015

Pnb