

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

W.A.No.1777 OF 2003

Between:

The Revenue Divisional Officer, Kakinada,
East Godavari District
and another

.... Appellants

A n d

K.Raghu Praveen
and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.A.No.1777 OF 2003

ORDER: *(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)*

This writ appeal is directed against the order dated 25.07.2003 in

W.P.No.12865 of 2002 whereby the learned Single Judge allowed the petition directing the 2nd respondent in writ petition i.e., 2nd appellant in the instant appeal to consider and process the documents presented by the respondents in the instant appeal, which were executed by their vendors on 23.04.1994 and release them if the same are found to be otherwise in order and if the proper stamp duty and registration fee is paid. It was further observed that it shall be open to appellant No.2 to require an endorsement to be made in the documents to the effect that the transfer under the documents shall be without prejudice to the rights of the Government under G.O.Ms.No.3 dated 10.01.2000. The transfer in favour of the respondents herein under the said documents thus was made subject to the result of W.P.No.191 of 2002 filed against G.O.Ms.No.3 dated 10.01.2000.

The respondents, who are petitioners in W.P.No.191 of 2002, challenged G.O.Ms.No.3 dated 10.01.2000 whereby the land in question was proposed to be acquired authorizing Revenue Divisional Officer, Kakinada to initiate acquisition proceedings.

The writ petition was referred to the Division Bench and the Division Bench presided over by the Hon'ble the Chief Justice vide order dated 06.03.2014 dismissed the same. The relevant portion of the order reads thus:

“On 23.10.2013, the learned Single Judge while entertaining this writ petition, recorded the submission of the learned Government Pleader for Revenue that there is a direction in Writ Appeal No. 1777 of 2003 to post this matter along with that matter. Office to verify and post accordingly.

In any view of the matter, this writ petition has been assigned to this Bench. We took up this writ petition and checked up the prayer. It appears, in this writ petition, the petitioner has challenged the Government Order, being, G.O. Ms. No.3, Education (SE/PD-I) Department, dated 10.1.2000 issued by the 1st respondent as to the legality and validity. It appears from the records that earlier two writ petitions were filed, one W.P. No. 1933 of 2000 and another Writ Petition No. 4614 of 2000 challenging the same very Government Order.

After contested hearing, the learned Single Judge, by judgment and order dated 31.12.2008, dismissed the aforementioned writ petitions holding that the aforesaid G.O. Ms. No. 83, Education Department, dated 10.1.2000 is valid and lawful on various reasoning recorded therein. Therefore, according to us, this writ petition is hit by the principle of *res judicata*, by virtue of Section 11 of Civil Procedure Code, 1908, which we quote herein:

Res judicata: No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation VI:

Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

The Code of Civil Procedure has been made applicable to writ jurisdiction. In any event, various High Courts and the Supreme Court have accepted in principle that not only the principle of *res judicata*, but the principle of constructive *res judicata* shall also be applicable in writ proceedings”.

It has come on record that two writ petitions bearing W.P.Nos.1933 and 4614 of 2000 were filed by the Management and the vendor respectively, involving part of the land, challenging the very same G.O.Ms.No.3 dated 10.01.2000. Those two writ petitions were also dismissed holding that the aforesaid G.O.Ms.No.3 dated 10.01.2000 is valid and lawful on various reasoning recorded therein. This Court is informed that both the petitioners in those writ petitions filed writ appeals and they are pending.

In the meantime, W.P.No.191 of 2002, as aforementioned, was placed before the Division Bench and the Division Bench vide order dated 06.03.2014 dismissed the same holding that the writ petition is hit

by the principle of *res judicata*. Against this order, the appellant has filed review WPMP SR.No.143015 of 2015 along with other applications seeking consequential prayers. In this backdrop, we have perused the letter dated 20.06.2002 impugned in the writ appeal arising from W.P.No.12865 of 2002. The relevant portion of the order reads thus:

“I invite attention to the reference cited, it is hereby informed that the RDO., Kakinada in her letter Rc.No.110/93, dt: 27.7.99 has requested the District Registrar not to register any document alienating the properties of Mc.Laurin High School since the properties were is custodies-logist and the RDO was appointed as Special Officer to look after the properties of Mc.Laurin High School.

It is also further informed that the Govt. in Education Department (SE/PC) through GO.Ms.No.3, dt: 10-1-2000 has also authorized the RDO., Kakinada to acquire the properties of the Mc.Laurin High School, Kakinada. Therefore, these lands have become Govt.lands for all purpose till orders are passed by the competent authority in contrary. Therefore, this office cannot register the documents kept pending u/s 47-A Register these documents tantamount to violations of Govt.orders.”

In this backdrop, when we expressed that the document executed between the respondents and their vendors cannot either be registered or if it is registered, released unless challenge raised by the respondents to G.O.Ms.No.3 dated 10.01.2000 is accepted/upheld either in review WPMP S.R.No.143015 of 2015 or in the writ appeals arising from the common judgment dated 31.12.2008 passed in W.P.Nos.1933 and 4614 of 2000. In other words, when we expressed that unless G.O.Ms.No.3 dated 10.01.2000 is set aside in the aforementioned proceedings, the document dated 23.04.1994 cannot either be registered or if it is already registered, released by the authority concerned, learned counsel for the parties in response have agreed for the following order:

“Respondents shall have a liberty to approach the appellants for

either registration of the documents dated 23.04.1994 or if they are already registered, for their release and only if G.O.Ms.No.3 dated 10.01.2000 is set aside. In other words, unless challenge raised to G.O.Ms.No.3 dated 10.01.2000 is upheld in review WPMP.SR.

No.143015 of 2015 or in writ appeals arising from the order dated 31.12.2008 passed in W.P.Nos.1933 and 4614 of 2000 the documents can be registered/released.

With these observations, we dispose of this writ appeal.

No costs. It is needless to mention that if respondents ultimately succeed in getting G.O.Ms.No.3 dated 10.01.2000 set aside, it will be open to them to approach the appellants for registration of documents dated 23.04.1994 and their release.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J

Date: 06.08.2015

Stp/Lrkm