

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS

Letters Patent Appeal Nos.1 and 2 of 2017

Common Judgment: (per V.Ramasubramanian, J.)

These appeals are filed under Clause 15 of the Letters Patent, questioning an order passed by the learned Judge, granting certain directions while dealing with a contempt petition.

2. Heard Mr. S.Ravi, learned Senior Counsel appearing for the appellants and Mr. M.Ravindranath Reddy, learned counsel appearing for the respondents.

3. The respondents herein filed a petition in W.P.No.39717 of 2014, challenging an auction notification issued on 08-12-2014 by the Telangana Housing Board, with respect to a community hall in a colony, of the owners of flats in which have formed themselves into a cooperative society which is the first respondent herein. Along with the writ petition, the respondents filed two miscellaneous petitions, one in W.P.M.P.No.49812 of 2014 and another in W.P.M.P. No.49813 of 2014. The prayer made in the 1st miscellaneous petition was for a direction to handover the management of the community hall to the Flat Owners' Welfare Cooperative Society Limited (1st respondent herein). The prayer in the 2nd miscellaneous petition was for interim stay of the auction.

4. On 24-12-2014, a learned Judge of this Court granted an interim order in the petition for stay and ordered

notice in the miscellaneous petition for direction. But it appears that the order passed in the stay petition was wrongly transcribed in the miscellaneous petition for a direction. In other words, an order was typed in W.P.M.P.No.49812 of 2014 to the following effect on 24-12-2014:

“There will be interim direction as prayed for.”

5. As a consequence, no order was typed in the stay petition, namely, W.P.M.P.No.49813 of 2014. But fortunately, the Housing Board did not take advantage of this mistake to proceed with the auction as scheduled on 29-12-2014. Since the Housing Board was represented by a counsel before the learned Judge on 24-12-2014, the Housing Board understood the one and only interim order passed on 24-12-2014 as an interim stay in the stay petition and not as an interim direction in the other petition.

6. However, it appears that the miscellaneous petitions were listed again on 29-12-2014. According to the respondents, the mistake was brought to the notice of the learned Judge, but the learned Judge confirmed the interim directions.

7. Contending that on 29-12-2014 the learned Judge refused to interfere with the interim direction already issued on 24-12-2014, the respondents filed a contempt petition in C.C.No.1000 of 2015. The only allegation of wilful disobedience made by the respondents as against the

contemnors was that despite a positive direction to handover the community hall to them, the contemnors failed to comply with the same.

8. It appears that the learned Judge took cognizance of the contempt and passed an interim order dated 01-7-2016 to the following effect:

“This Court granted interim order as prayed for on 24-12-2014. The interim prayer sought in W.P.M.P. No.49812 of 2014 in W.P.No.39717 of 2014 was to direct the 2nd respondent to hand over the management of Community Hall situated at Vigyanpuri Colony, Vidyanagar, Hyderabad, to the 1st petitioner-Society.

The matter underwent few adjournments. On the last occasion, at the request of learned Standing counsel, the matter was adjourned on the ground that the vacate petition was likely to be taken up in the 2nd week of June.

It is not denied that the Community Hall is under lock and key and is not put to use due to pendency of the writ petition. The initial proposal to hold auction and lease out the premises has not materialized so far. On the contrary, the petitioner-Society demands granting of possession in terms of the interim order. Since this order is still in force, the respondents cannot refuse to handover possession.

Hence, the 2nd respondent is directed to immediately handover possession of the Community Hall at Vigyanpuri Colony, Vidyanagar, Hyderabad to the 1st petitioner-Society.

Learned counsel for the petitioners submits that the Community Hall would be put to use only for conducting of Yoga classes, conducting of meetings, and Gym would be used.

Having regard to the above, the 1st petitioner shall utilize the community hall only for the purpose of conducting of yoga classes, conducting of meetings of the Society and Gym. They shall not use the community hall for any other purpose. The petitioner-Society shall also pay the electricity charges. However, the entitlement of the

respondent-Board to recover rents from them left to be agitated in the writ petition.

Post on 08-7-2016 for reporting compliance.”

9. Aggrieved by the aforesaid order, the Secretary to the Department of Housing, who is also holding additional charge of the post of Vice-Chairman and Managing Director of the Housing Board has come up with L.P.A.(SR).No.8524 of 2016 and the Chairman and Managing Director of Telangana Housing Board, who was *suo motu* impleaded as respondent No.3 in C.C.No.1000 of 2015 by an order dated 17-8-2016, has come up with L.P.A.(SR).No.11324 of 2016.

10. The main grievance of the appellants/contemnors is that no contempt would arise, when even according to the respondents, no interim direction was passed *ex parte* on 24-12-2014. If no contempt would arise, the question of passing an interim direction in a contempt petition would not arise.

11. But the contention of the respondents is that the order dated 24-12-2014 directing the appellants to handover possession of the community hall to them, is still in force and that so long as the said order is in force, it is the duty of the appellants to comply with the same. It is contended very strongly by the learned counsel for the respondents that the correctness of the interim direction issued by the learned Judge on 24-12-2014 cannot be questioned in a contempt petition.

12. We have carefully considered the above submissions.

13. There is no dispute about the following facts, namely, (a) that on 24-12-2014 when the writ petition filed by the respondents came up for orders as to admission, the learned Judge granted an *ex parte* interim stay only of the auction scheduled to be held on 29-12-2014, but did not grant an interim direction to handover the community hall to the respondents, (b) that unfortunately, the Court Master wrongly typed the *ex parte* interim order granted by the learned Judge in the petition for interim direction, instead of typing it in the petition for interim stay; (c) that even in the pre-contempt notice issued by the learned counsel for the respondents on 27-12-2014, the above mistake was admitted by the respondents.

14. Therefore, there is a clear admission on the part of the respondents that no interim direction was granted *ex parte* against the appellants herein on 24-12-2014 to handover the community hall to the respondents herein. Despite admitting this fact, the respondents allege contempt against the appellants, only on the basis of a contention that the matter again came up on 29-12-2014 and the learned Judge refused to modify the interim direction already typed in the miscellaneous petition for direction. But there is no written order dated 29-12-2014 placed on record. In the absence of a positive direction issued by the learned Judge on

29-12-2014 that there will be both interim stay as well as interim direction as prayed for, the appellants cannot be held to be guilty of wilful disobedience of any direction. As a matter of fact, there was no interim direction issued on 24-12-2014 by the learned Judge. An interim stay granted in the stay petition was wrongly typed, even according to the respondents, in the petition for interim directions. Therefore, the very initiation of contempt proceedings by the respondents as against the appellants, is clearly an abuse of the process of law.

15. In any case, it is admitted by the learned counsel for the respondents that a petition for vacating the interim direction is pending before the learned Judge. The said petition cannot be made infructuous by granting an interim direction in the contempt petition. By the order impugned in these letters patent appeals, the respondents have now secured an interim order that they failed to get on 24-12-2014, but which they claim to have secured on 29-12-2014. No order dated 29-12-2014 is placed before us.

16. Therefore, it is clear that the respondents have secured by the orders impugned in these appeals, a benefit that was not intended nor granted even in the writ petition. Hence, the interim order passed by the learned Judge in the contempt petition is liable to be set aside.

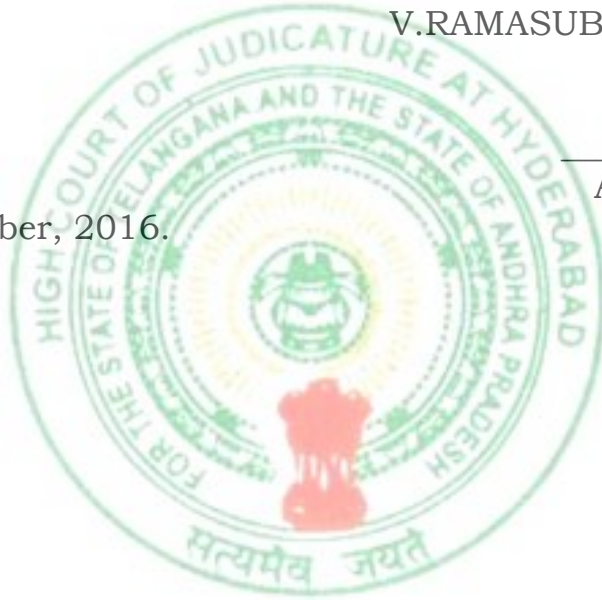
17. Accordingly, the letters patent appeals are allowed and the order of the learned Judge dated 01-7-2016 in

C.C.No.1000 of 2015 is set aside. We make it clear that we have not pronounced any opinion on the merits of the dispute. Therefore, we request the learned Judge to deal with the petition for interim directions and the petition for stay along with the vacate stay petitions independently and decide the same one way or the other along with the contempt petition. The miscellaneous petitions, if any, pending in these appeals shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ANIS, J.

20th September, 2016.
Sr/Ak



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS

Letters Patent Appeal Nos.1 and 2 of 2017
(per VRS, J.)



20th September, 2016.
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