

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1632 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful plaintiffs/respondents/petitioners is directed against the orders dated 19.02.2015 of the learned I Additional Chief Judge, City Civil Court, Secunderabad passed in CMA.no.10 of 2013.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and the learned Standing Counsel appearing for the 1st respondent-Cantonment Board/appellant/2nd defendant ('the 2nd defendant', for brevity). Respondent no.2 is stated to be not a necessary party. I have perused the material record.

3. To begin with, it is to be noted that the plaintiffs filed the suit for perpetual injunction against the sole defendant viz., the Teachers Co-operative Housing Society Ltd./the 2nd respondent herein for a perpetual injunction in respect of 1333.33 Square yards of land forming part of GLR survey nos.342, 343 and 364 corresponding to Revenue Survey no.114, situate at Pedda Kamela Road adjacent to MES Pump house road, Trimulgherry, Secunderabad morefully described in the schedule annexed to the plaint. The Cantonment Board/the 2nd defendant/the 1st respondent herein is impleaded in the suit as per the orders in IA.no.130 of 2013. In the said suit, the plaintiffs filed IA.no.131 of 2013 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for granting of a temporary injunction restraining the respondents/defendants and their men etcetera from changing the nature of the suit schedule property. The 2nd defendant/Cantonment Board through its CEO had filed a counter affidavit and resisted the application for temporary injunction filed by the plaintiffs. At the hearing, exhibits P1 to P8 and R1 to R5 were marked. No oral evidence was adduced on either side. On merits, the trial Court had allowed the

petition and restrained the 2nd defendant from proceeding with the construction work in the suit schedule property pending final disposal of the suit. Aggrieved of the said orders, the 2nd defendant preferred the aforementioned CMA before the Court below. The learned Additional Chief Judge by the orders impugned had allowed the said appeal and had set aside the orders and decretal orders of the Court below and dismissed the said petition with a direction to the 2nd defendant not to make any further permanent constructions in the suit schedule property pending disposal of the suit and not to use the same except as a park for the benefit of the general public. Aggrieved of the said orders, the plaintiffs had preferred this CRP.

4. In the well considered view of this Court, in this CRP, there is no need to go into the merits of the matter as the main contention of the plaintiffs is that the above said CMA was disposed of on merits by the Court below without giving an opportunity of hearing to the plaintiffs/respondents therein.

5. The learned counsel for the plaintiffs would submit that the IA in the CMA alone came up for hearing on various dates from 12.06.2013 till 25.03.2014; and that on 25.03.2014, the Court below had called for the record from the trial Court and had directed the CMA to be listed on 01.05.2014; and that on 01.05.2014, the Court below had heard the arguments of the learned counsel for the appellant/2nd defendant only and had directed the matter to be listed on 02.06.2014; and that from 02.06.2014, the appeal was adjourned to 09.06.2014, and from 09.06.2014 to various dates, viz., 22.08.2014, 21.10.2014 and 19.11.2014 mainly for the reason that the records of the trial Court are not received; and that from 04.12.2014 the matter was adjourned to 12.12.2014; and that the matter was again adjourned at request, from 12.12.2014 to 17.12.2014; and that on 17.12.2014, arguments of the learned counsel for the appellant/2nd defendant were only heard; and that the matter was adjourned to 24.12.2014; and that on 24.12.2014, the Presiding Officer was on leave; and that, therefore, the case was posted to 29.12.2014; and that on 29.12.2014 as there was no representation for the respondents the matter was adjourned finally to 19.01.2015; and that on 19.01.2015 as there

was no representation for the respondents therein i.e., the plaintiffs, the matter was posted to 19.02.2015 for orders; and that on 19.02.2015 the orders were pronounced on merits by mentioning the impugned orders that arguments of both the sides are heard, though undeniably no opportunity was given to the plaintiffs/respondents to advance arguments on their side. Thus, he would submit that the contents of the proceeding sheet of the Court below, make it manifest that arguments on the side of the respondents therein i.e., the plaintiffs were not at all heard by the Court below. He would further point out from the orders of the Court below that though no arguments were heard, the Court below had stated in its order, which are impugned, that it had 'heard both sides' and that, therefore, the order passed without hearing the plaintiffs/respondents in the CMA is liable to be set aside for violation of principles of natural justice. His further submissions are as follows: - 'The 'A' diary of the Court below dated 19.02.2015 on which day the orders were pronounced in the subject CMA.no.10 of 2013 would indicate that many matters on that day were adjourned on the ground that advocates are boycotting the courts on account of the then ongoing agitation for formation of separate State of Telangana, but, the subject CMA.no.10 of 2013 was allowed by the Court below.' In support of the said contention, the learned counsel for the plaintiffs filed the copy of the 'A' diary of 19.02.2015 of the Court below. He would also submit that the boycott of Courts by the advocates went on for several months and that though the Counsel for the plaintiffs/respondents in the CMA was at the Court premises, the leaders of the agitation did not allow the advocates to enter the Court Halls and hence the Counsel could not appear before the Court and make submissions in the CMA.

6. On the other hand, the learned counsel for the 2nd defendant having produced the copy of the proceedings sheet showing the history of case hearings would contend that the Court below had heard the arguments on the appellant side first on 01.05.2014 but later adjourned the matter from time to time for want of records of the trial Court and that again on 17.12.2014 the learned Judge of the Court below had heard the arguments on the side of the

appellant and adjourned the matter to 24.12.2014 and that on that day as the learned Presiding Officer was on leave the matter could not be taken up and, that therefore, the matter was posted to 29.12.2014 and that on 29.12.2014 there was no representation for the plaintiffs i.e., the respondents in the CMA and that, therefore, the matter was adjourned to 19.01.2015 and that on that day also the respondents/plaintiffs were absent and there was no representation for them and, hence, the matter was directed to be listed on 19.02.2015 for pronouncement of orders on merits and that on the said date the CMA was disposed of on merits.

7. I have noted the facts and given earnest consideration to the submissions. Even according to the submissions of both the sides, only arguments on the side of the appellant were heard in the CMA by the Court below. The arguments on the side of the respondents/plaintiffs were not heard. The respondent/plaintiffs were not set *ex parte* in the CMA but an order on merits was passed. In the order passed by the Court below it is not even stated that no arguments were advanced on the side of the plaintiffs/respondents therein; but it stated that the submissions of both the sides were heard, though in fact the arguments of the respondents/plaintiffs are not heard. Therefore, the material record discloses that the order impugned though appears to have been passed on merits was in-fact passed without hearing the learned counsel for the plaintiffs/respondents in the CMA. Another important factor is that the advocates practicing in twin cities were at that relevant time continuously boycotting the Courts on account of the then ongoing agitation for formation of separate State of Telangana. In the circumstances, the submission of the learned counsel for the revision petitioners/plaintiffs is that though the counsel was very much present outside the Court premises on 29.12.2014 and 19.01.2015 he was not allowed to enter the Court hall and, therefore, he could not make representation or argue the matter before the court below. As already noted, the copy of the 'A' diary of 19.02.2015 clearly shows that several matters listed on that day were adjourned by the Court below on the ground that advocates were boycotting the Courts. Therefore, for the inability of the advocate to enter the Court hall on account of the ongoing agitation and the obstruction that was caused by

the agitators to enter the Court hall, either the counsel or the plaintiffs cannot be blamed. Therefore, an opportunity of hearing was denied to the plaintiffs and hence, there was a clear violation of the *Principle of Natural Justice* viz., '*audi alteram partem*'. The law is well settled that that a 'Court shall not pass order on merits by ignoring principle of natural justice'. The '*audi alteram partem*' rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. In the circumstances, in the well considered view of this Court, the order which reflects that submissions of both the sides are heard though in fact submissions of the plaintiffs/respondents were not heard is unsustainable and is liable to be set aside.

8. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and the CMA.no.10 of 2013 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad is remitted to the Court below for *de novo* hearing and disposal on merits in strict accordance with the procedure established by law. However, since the suit is of the year 2011, the Court below may dispose of the CMA as expeditiously as possible and preferably within one month from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

30th March, 2016
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